

LISA GRIPPO
HEALTHY ADVICE NETWORKS vs. CONTEXTMEDIA

March 26, 2014

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

-----X

HEALTHY ADVICE NETWORKS, LLC,

Plaintiff,

vs.

Case No.
1:12CV610

CONTEXTMEDIA, INC.,

Defendant.

-----X

VIDEOTAPED DEPOSITION OF LISA GRIPPO

New York, New York

Wednesday, March 26, 2014

Reported by:
JOAN WARNOCK
JOB NO. 10453

March 26, 2014

1:45 p.m.

Videotaped deposition of LISA
GRIPPO held at the offices of Sidley
Austin LLP, 787 Seventh Avenue,
New York, New York, before Joan Warnock,
a Notary Public of the State of
New York.

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A P P E A R A N C E S:

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BY: GRANT S. COWAN, ESQ.

SIDLEY AUSTIN, LLP

Attorneys for Defendant

One South Dearborn Street

Chicago, Illinois 60603

BY: RICHARD J. O'BRIEN, ESQ.

ALSO PRESENT:

KRISTIN ZARNETSKE, VIDEOGRAPHER

1 L. Grippo

2 VIDEOGRAPHER: This is tape number
3 one of the videotaped deposition of
4 Lisa M. Grippo, taken by defendant in
5 the matter of Healthy Advice Networks,
6 LLC, Plaintiff, versus ContextMedia,
7 Inc., in the United States District
8 Court, Southern District of Ohio,
9 Western Division, Case Number 1:12CV610.

10 This deposition is being held on
11 March 26, 2014, at approximately
12 1:44 p.m. My name is Kristin Zarnetske.
13 I'm the legal videographer representing
14 Esquire Deposition Solutions. The court
15 reporter, also in association with
16 Esquire, is Joan Warnock. This
17 deposition is being held at the law firm
18 of Sidley Austin at 787 Seventh Avenue,
19 New York, New York.

20 Will counsel present please
21 introduce themselves for the record.

22 MR. COWAN: Grant Cowan
23 representing the plaintiff and the
24 witness.

25 MR. O'BRIEN: Dick O'Brien

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1 L. Grippo
2 representing the defendant.

3 VIDEOGRAPHER: Thank you. Will the
4 court reporter please swear in the
5 witness.

6 L I S A G R I P P O, called as a witness,
7 having been duly sworn by a Notary
8 Public, was examined and testified
9 as follows:

10 COURT REPORTER: Please state your
11 name and address for the record.

12 THE WITNESS: Lisa Grippo,
13 12 Lincoln Avenue, Commack, New York
14 11725.

15 EXAMINATION BY

16 MR. O'BRIEN:

17 Q. Good afternoon, Ms. Grippo. We
18 just met. I'm Dick O'Brien. And, as you
19 know, I represent the defendant in a lawsuit
20 brought against it by your employer, Healthy
21 Advice Networks. I'll sometimes refer to
22 Healthy Advice Networks as "HAN," if that's
23 okay with you.

24 A. Okay.

25 Q. And may slip into referring to it

1 L. Grippo
2 as "PatientPoint," if that's also okay with
3 you.

4 A. Absolutely.

5 Q. I'll be asking you a series of
6 questions today. If at any point in time you
7 don't understand any one of my questions,
8 please let me know that. Okay?

9 A. Okay.

10 Q. If you go ahead and answer my
11 question, we're all going to leave the room
12 today with the assumption that you've
13 understood the question. Is that fair?

14 A. Yes.

15 Q. What's your current position with
16 HAN?

17 A. I am no longer employed by HAN. I
18 am working with a different company now.

19 Q. When did you cease employment with
20 HAN?

21 A. In September.

22 Q. And who are you working with now?

23 A. Last year. I am working with Teq,
24 Tequipment. They're based in Huntington,
25 Long Island.

1 L. Grippo

2 Q. What's the name of the company?

3 A. It's Teq, T-e-q.

4 Q. And I guess I've lost track of who
5 is a current employee and who's a former
6 employee. What do you do for Tequipment?

7 A. A sales role.

8 Q. Same general field as HAN or a
9 completely different field?

10 A. No. We actually sell smartboards
11 and equipment to K through 12. So
12 educational tools.

13 Q. So a completely different field?

14 A. Yeah.

15 Q. Why did you leave HAN?

16 A. I left in September of last year.
17 I had taken a few different roles within my
18 last year and a half with the company, was
19 traveling quite a bit, and there was a lot of
20 reorganization going on. I had made
21 management aware of the fact that I wasn't
22 very happy with a lot of the changes in my
23 position. I really didn't want to be
24 traveling anymore. So I had been there for
25 nine years, and we decided to part ways.

1 L. Grippo

2 They gave me a severance, and I left in
3 September.

4 Q. Are you still receiving payments
5 under the severance?

6 A. I'm not.

7 Q. Was that a lump sum?

8 A. Yes.

9 Q. Do you have any agreement in place
10 with HAN right now regarding this litigation?

11 A. Not that I'm aware of.

12 Q. For example, your severance
13 agreement doesn't say that you'll provide
14 testimony when asked or things like that?

15 A. I did not check my severance
16 agreement. It may. But it was not under --
17 I was not told by the company that I had to
18 appear here today if that was the question.

19 Q. I've listened to testimony from
20 other witnesses, principally Tom Campbell,
21 about management at some point in time in
22 2013 basically deciding to -- I don't mean
23 this in a pejorative sense -- purge senior
24 management and bring in a new team. Is that
25 your memory of what happened?

1 L. Grippo

2 A. Well, I left -- there was a lot of
3 changes in management over the past several
4 years when new management came in really in
5 2012, I think. So it was a period of time
6 that there had been lots of different changes
7 going on in the organization.

8 Q. Lisa Brewer left?

9 A. Jill Brewer.

10 Q. Jill Brewer. You're Lisa. Jill
11 Brewer left. Debra Schnell left; right?

12 A. Debbie retired. She had been
13 planning on retiring, yes.

14 Q. Mr. Campbell ultimately left?

15 A. (Indicating).

16 Q. You have to answer out loud.

17 A. Oh. Sorry. Yes.

18 Q. And Ms. Shattles?

19 A. Sabrina.

20 Q. Right. She left; right?

21 A. Yes.

22 Q. And a new COO and new CFO came in;
23 right?

24 A. Correct.

25 Q. Who did you report to when you

1 L. Grippo

2 left?

3 A. Chris Martini.

4 Q. He was the president; right?

5 A. I believe so.

6 Q. And at the time you left HAN, what
7 was your last position?

8 A. What was my actual title. I was
9 essentially vice president of sales. We had
10 a few different titles going on, but I was
11 the area vice president for this region.

12 Q. This region being which states?

13 A. It kept changing. It kept
14 changing. But I was covering essentially
15 from Maine to Virginia.

16 Q. And when you say sales, that's
17 sales efforts with respect to recruiting
18 practices for HAN; right?

19 A. Correct.

20 Q. How many regions did HAN have when
21 you left in addition to yours?

22 A. For about the year prior to me
23 leaving, they were going through several
24 iterations of what the sales force was going
25 to look like for the company. We previously

1 L. Grippo
2 had three separate sales entities. And we
3 were trying to combine those and figure out
4 what the right mix is. Geography was part of
5 that as well, trying to figure out where we
6 had resources, where we wanted to have
7 resources, what made the most sense for the
8 company. I believe when I left there were
9 four regions, but I don't recall exactly.

10 Q. Is it your understanding these
11 changes in management were due to the equity
12 investor not being happy with the financial
13 performance of the company?

14 A. I'm not exactly certain.

15 Q. Have you been deposed before today?

16 A. I have not.

17 Q. When you left HAN, describe for us
18 what your general sort of day to day
19 responsibilities were?

20 A. I had a team of sales reps that
21 were out talking to physicians, physician
22 groups, hospitals regarding all of our
23 services. So we had, as you know, acquired
24 PatientPoint, which is the coordinated care
25 division. And we had our hospital division,

1 L. Grippo
2 which was selling hospital guides to and
3 other services to hospitals. And then we had
4 our educational programs. And those are
5 geared more towards physician offices. And
6 so my team was actually out selling all of
7 those solutions in my geographic area.

8 Q. Including trying to recruit
9 physicians for the PCN network?

10 A. Correct.

11 Q. And the ACN network; correct?

12 A. Correct.

13 Q. I take it your titles changed over
14 time while you were at HAN for nine years;
15 right?

16 A. Yes.

17 Q. At all times when you were there,
18 though, were your responsibilities in one
19 way, shape, or form focused on trying to
20 recruit physician practices?

21 A. Yes.

22 Q. So in that sense your job never
23 really changed?

24 A. Correct. That was -- well, that
25 was always part of my responsibility. I

1 L. Grippo
2 wasn't always responsible for the educational
3 programs. For a period of time I was focused
4 solely on the technology solution that we had
5 acquired. But that was a very short period
6 of time, for about a year out of the nine
7 that I was there.

8 Q. And I'm really going to be focused
9 today on the PCN and can networks, if that's
10 okay with you.

11 A. Yes.

12 Q. And when you said you had a team
13 that worked for you, did this team make phone
14 calls into practices? Did they show up in
15 person to practices or a mixture of those two
16 things?

17 A. Mixture.

18 Q. Were those communications with
19 practices both for the purpose of trying to
20 recruit new practices but also to maintain
21 relationships with existing practices?

22 A. Yes.

23 Q. What did you do, if anything, to
24 prepare for your deposition today?

25 A. I had a conversation earlier today

1 L. Grippo

2 with Grant.

3 Q. And he's your lawyer here today;
4 right?

5 A. Yes.

6 Q. Do you agree with me in your
7 business conduct that it's important to be
8 truthful in your communications?

9 A. Absolutely.

10 Q. And to be accurate?

11 A. Absolutely.

12 Q. And not be misleading?

13 A. Yes.

14 Q. And that would be true whether it
15 was a conversation or an email or
16 presentation or any sort of communication?

17 A. Yes.

18 Q. And you endeavored to do that while
19 you were at HAN?

20 A. Yes.

21 Q. And you feel like you did a good
22 job at it?

23 A. Yes.

24 Q. And if someone working for you, to
25 your knowledge, was not being truthful or

1 L. Grippo

2 accurate in their communications, I take it
3 you'd have something to say about it?

4 A. Yes.

5 Q. Have you ever spoken to anyone at
6 ContextMedia before?

7 A. I believe that we -- I don't think
8 we actually spoke. I ran into some of them
9 at conference, at a NORM conference a couple
10 of -- well, many years back now, so.

11 Q. You don't look old enough for it to
12 be many years.

13 A. Oh, thank you.

14 Q. And that was just sort of
15 informal --

16 MR. COWAN: He's still the bad guy.

17 Don't let him fool you.

18 Q. That was very informal
19 communication, I take it?

20 A. Yes.

21 Q. To your knowledge, ContextMedia
22 didn't do anything untoward or behave
23 improperly in that conference setting?

24 A. To my knowledge, there was -- there
25 was definitely an air about them, an

1 L. Grippo

2 arrogance about some of the sales reps. And
3 it was interesting, it was the first time I
4 had ever encountered anything like that to
5 the point where it was noticeable to others
6 around me, and they were kind of wondering.
7 And I had to say, you know, they are a
8 competitor, we have a competing product, and
9 that's fine, so -- but did they say anything
10 directly to me, no. It was more -- I guess
11 just that, just sort of an arrogance and
12 behavior that --

13 Q. Young?

14 A. -- I interpreted -- yeah, they were

15 --

16 Q. Young?

17 A. Young.

18 Q. Energetic?

19 A. Sure.

20 Q. Enthusiastic?

21 A. Yes.

22 Q. Good qualities for a salesperson?

23 A. Yes.

24 Q. What's your understanding of why

25 we're here today, that is, why we have a

1 L. Grippo

2 lawsuit?

3 A. My understanding, and, actually,
4 the reason -- and I had shared with Grant, I
5 am no longer employed by PatientPoint. I'm
6 under no obligation to come in today. As a
7 manager within the company, I was aware of a
8 lot of what was going on with ContextMedia
9 and as we were losing physicians and
10 practices to them. And I just really felt
11 that the way that they behaved was very
12 unethical.

13 And so when I was asked to come in,
14 of course, I didn't realize it was going to
15 be such a significant amount of my time, I
16 thought, you know, it was something that I
17 wanted to do, because it really was something
18 that was very troublesome to me at the time.
19 I just -- I'm sure things like this go on all
20 the time in business. I just had -- it was
21 the first time I had been exposed to anything
22 to this extent.

23 Q. Were you involved in the decision
24 made by HAN to sue ContextMedia?

25 A. I was not.

1 L. Grippo

2 Q. But you were at the company when
3 the suit was brought; right?

4 A. I was.

5 Q. And you said a moment ago that it's
6 your belief that ContextMedia did things that
7 were unethical; is that right?

8 A. Correct.

9 Q. And can you tell us what things
10 you're referring to when you say that?

11 A. I was informed by practices that
12 they were calling them and essentially
13 speaking ill of our product, misrepresenting
14 our program, misrepresenting the company.
15 They were in a couple of instances that I'm
16 aware of, they actually walked into the
17 practice -- and if you're going to ask me to
18 recall exactly which practice, I'm not going
19 to -- but told them that they were there,
20 they were upgrading their equipment. And
21 they subsequently took down our equipment and
22 put theirs up in our place in -- yeah, in our
23 place. So there was, you know, a variety of
24 communications over the years regarding this.
25 And we really had significant churn in our

1 L. Grippo

2 physician practices.

3 Q. Anything else other than the list
4 you've given me that leads you to testify
5 that ContextMedia behaved unethically?

6 A. Nothing that's coming to mind right
7 now.

8 Q. And one of the rules of this
9 deposition is that you can jump in at any
10 point in time, an hour from now, an hour and
11 a half from now, thirty minutes from now, and
12 change, revise, or supplement an answer, no
13 questions asked. You don't have to wait for
14 me to ask you a follow-up question. You can
15 just jump in and do that. Okay?

16 A. Okay.

17 Q. So something comes to mind, just
18 feel free to share it with us.

19 A. Okay.

20 Q. Now, you say that you were informed
21 by practices that ContextMedia was speaking
22 ill of HAN; right?

23 A. Correct.

24 Q. And you say that HAN was
25 misrepresenting the program; right?

1 L. Grippo

2 A. They were misrepresenting our
3 program.

4 Q. Right. And they were
5 misrepresenting your company; right?

6 A. Correct.

7 Q. Those two misrepresentations,
8 misrepresentation of the program and
9 misrepresentation of the company, are those,
10 again, things that you know about only
11 because practices told you?

12 A. Correct.

13 Q. You're aware that, are you not, HAN
14 has throughout the time you were there
15 maintained a rather robust CMS database?

16 A. Yes.

17 Q. And one of the purposes of many of
18 that database is to capture all important
19 information that HAN learns about a practice;
20 right?

21 A. Um-hmm.

22 Q. You have to answer out loud.

23 A. Oh, I'm so sorry. Yes.

24 Q. In fact, you know Ms. Finley;
25 right?

1 L. Grippo

2 A. Yes.

3 Q. Ms. Finley has a whole team whose
4 responsibilities, among other things, include
5 getting with practices on a regular basis,
6 and particularly when they've been told
7 they're thinking about switching, to
8 understand why the practice is thinking about
9 switching; right?

10 A. Yes.

11 Q. And those folks are all trained to
12 dutifully put that information into the
13 database so that you can all see it; right?

14 A. Correct.

15 Q. Your team, do they receive similar
16 training when they're either making their
17 phone calls or out there on their visits, if
18 they learn something of significance to the
19 business about a practice, they're supposed
20 to put it in the CMS database?

21 A. That should. With salespeople it's
22 often hard to get them to actually log in and
23 put the data into CMS. We would try, and
24 that was certainly a hope, but not everything
25 made it into -- I'm quite certain not

1 L. Grippo

2 everything made it into CMS.

3 Q. But they were trained to do that;
4 right?

5 A. Trained to do that themselves or to
6 contact their, you know, inside person.

7 Q. If it was really a problem that
8 ContextMedia was speaking ill to practices of
9 HAN, you would expect to find references to
10 that in the database; right?

11 A. Potentially. You know, CMS is not
12 extremely user friendly. So in terms of it
13 being a great tool for the team, it really
14 wasn't. So while we would have liked for
15 them to capture more data there, the reality
16 is that they didn't. I believe that we
17 started trying to document more of this as a
18 result of what we were encountering. We
19 really had never encountered, you know,
20 something to this extent with regard to a
21 competitor. I mean there's obviously other
22 competitors, Accent Health or whatever, but
23 -- so over the years that I was there, we
24 started and I couldn't tell you exactly when
25 we began asking our team to really document,

1 L. Grippo

2 or if we're losing a practice, please, you
3 know, understand why, make sure it's
4 documented who we're, you know, losing them
5 to, and document who the competitor is and
6 make sure that everything with regards to a
7 save is documented in CMS. I know that that
8 ended up being a request that was made of
9 particularly Amy's team. I can't tell you
10 when that went into place, though.

11 Q. Can you tell me what year?

12 A. I'm sorry. I don't recall.

13 Q. Can you identify for me a single
14 practice that told you the ContextMedia was
15 speaking ill of HAN?

16 A. Off the top of my head, I cannot.

17 Q. Can you think of a single practice
18 that told you ContextMedia was
19 misrepresenting the HAN program?

20 A. Told me, no. Me specifically, no.

21 Q. Can you think of a single practice
22 that told you that ContextMedia was
23 misrepresenting HAN as a company?

24 A. Again, directly to me, no, I
25 cannot. I don't recall.

1 L. Grippo

2 Q. Well, for all these questions let
3 me go back. Can you identify a practice as
4 to which any of your team told you these
5 things had been said?

6 A. Yes.

7 Q. What practice?

8 A. There were a couple of them in
9 Queens in Diane's territory.

10 Q. Can you name the practice other
11 than give me one of the boroughs?

12 A. I mean nine years. I think Forest
13 Hills potentially. We had some in upstate.
14 We had some in -- I mean I -- well, you know
15 what, now that I'm thinking, there was a
16 large practice on Long Island that I met
17 with, one of the ones that we did end up
18 losing, which was very sad to hear, that we
19 had a very good relationship with. And I
20 went and I was speaking with one of the
21 office managers. And she was like, this
22 company is just badgering us, they're just
23 calling us all the time. So yes, there was a
24 company I could think of, or a practice, and
25 I will -- I can get you the name. It's not

1 L. Grippo
2 coming to me right now. It's Long Island
3 Rheumatology Associates perhaps. And, you
4 know, I apologized for that.

5 It was getting very hard for any of
6 us. There was basically three companies
7 targeting rheumatologists. We had the
8 Rheumatoid Health Network. There was Health
9 Monitor. And there was Healthy Advice. And
10 my reps were having a really hard time
11 getting in to talk to anyone to make sure
12 that the relationship was strong and that we
13 were doing what we needed to do, simply
14 because they were being inundated by calls
15 trying to get them to switch. And, you know,
16 I think it was getting a little ugly from the
17 practice's perspective in terms of, you know,
18 the number of people that were reaching out
19 and what was going on.

20 Q. Healthy Monitor and RHN were
21 relative newcomers relative to HAN to
22 rheumatology?

23 A. To the rheumatology space, yes.

24 Q. And so where HAN had enjoyed sort
25 of a monopoly for years, now it was facing

1 L. Grippo

2 intense competition; right?

3 A. Yes.

4 Q. And the one practice that you were
5 able to identify for me in response to my
6 questions about unethical things you say were
7 told to you by practices about the behavior
8 of ContextMedia, what you told me was that
9 the practice told you that ContextMedia was
10 badgering it; right?

11 MR. COWAN: Object to the form. Go
12 ahead.

13 A. I believe that's what I said, that
14 they were calling, they were relentless in
15 their calling. I heard that from several
16 practices. I'm not going to be able to give
17 you exact practice names.

18 Q. And I don't want it, because
19 badgering is not unethical, is it?

20 A. It is not. That's not unethical.
21 It was once they reached this woman and what
22 they were saying with regard to -- that our
23 content wasn't updated, that it was a Power
24 Point presentation and nothing more, that,
25 you know, we were stuck in the 80's and -- I

1 L. Grippo

2 don't even remember all of the things that,
3 you know, were said. I just don't think that
4 it's right to be so disparaging, you know, to
5 a competitor. I know that it happens. Maybe
6 that's their sales tactic, but.

7 Q. And the answer you just gave me,
8 you don't think that's in the CMS database?

9 A. I'm sorry. Which answer?

10 Q. Well, you just seemed to give me an
11 answer explaining in some detail things that
12 a practice had told you that ContextMedia
13 did. Did I understand your answer correctly?

14 A. Yes.

15 Q. Shouldn't that be in the database?

16 A. Probably.

17 Q. Let me come at it this way. As you
18 sit here today in 2014, can you think of any
19 resource at all within HAN that is a better
20 source of information about why practices
21 switched from HAN to ContextMedia than the
22 CMS database?

23 A. That should be the repository of
24 truth, but the reality is not all data got in
25 -- would get into CMS. So I would say that

1 L. Grippo
2 the better resource would be the team of
3 customer service representatives. They were
4 fielding the calls. They were speaking to
5 the customers. They had the best sense of
6 exactly what was going on.

7 Q. In terms of unethical comments
8 which HAN believes were made by ContextMedia,
9 could you think of a better resource within
10 the company than the CMS database?

11 A. Again, I'm not certain how much
12 data was actually entered into CMS.

13 Q. I understand that part. But can
14 you think of a better resource in 2014 for
15 understanding supposed unethical comments
16 that were made by ContextMedia about HAN than
17 that database?

18 A. Again, the only thing that's coming
19 to mind is the employees, the ones that were
20 hearing this. So should they have documented
21 all of this? I'm sure everyone would have
22 been more thorough in doing that had we have
23 known where we would be today. But I think
24 other than actually documenting it, it was
25 the people who were hearing it and having

1 L. Grippo

2 those conversations.

3 Q. So are you telling me that the
4 memories of the likes of Lisa Grippo are a
5 better resource for exactly what was said to
6 practices by ContextMedia than the CMS
7 database?

8 A. Not if there's someone who would
9 like data to support that.

10 Q. How about facts?

11 A. Right. I mean it's -- but even if
12 it was typed in, it's subjective, right.
13 Everything is subjective. What I'm saying is
14 subjective.

15 Q. I understand.

16 A. I understand that --

17 MR. COWAN: Wait a second. Go
18 ahead.

19 Q. Sorry.

20 A. No. I understand that this is all
21 subjective, right. This is what we were
22 relaying what we were told by a practice.
23 And, you know, who knows if the practice was
24 even telling us everything that was said,
25 right?

1 L. Grippo

2 Q. I didn't mean to cut you off. So
3 sorry. Are you finished?

4 A. That's fine.

5 Q. But would you think that your
6 subjective impressions contemporaneous with
7 the time the comment was made would be more
8 reliable than your recollection in 2014?

9 A. Are you asking should I have
10 documented my thoughts at that time?

11 Q. No. I'm asking which would you
12 find more reliable, impressions put in the
13 CMS database at the time the comments were
14 made or near the time the comments were made,
15 would that data or facts be more reliable,
16 however subjective they might be, than
17 someone's unaided memory years later?

18 A. I would say if everyone documented
19 what they had heard back then, that would
20 absolutely be more accurate. I don't believe
21 that occurred. We did start mandating that
22 people put everything in there, but I will
23 tell you I'm quite certain not everything is
24 documented in CMS.

25 Q. I'm not fighting you on that.

1 L. Grippo

2 A. No, no, I know. I don't --

3 Q. You've told me the shortcomings, in
4 your opinion, of the database.

5 A. Right.

6 Q. I get that. But here we are in
7 2014 in a lawsuit. Which is the most
8 reliable source, however imperfect you might
9 feel it is, the CMS database or the memories
10 of the likes of Lisa Grippo in 2014?

11 A. You would have to say the CMS
12 database.

13 Q. Can you identify a single practice
14 that switched from HAN to ContextMedia
15 because of something ContextMedia did that
16 was wrong?

17 A. I know that we had conversations
18 with practices, yes. I mean, I'm sorry, I
19 can't recall a particular one, but I know
20 that when we were actually able to reach
21 customers prior to our equipment being taken
22 down, and they now understood what was
23 occurring and that this was not us upgrading
24 their equipment, that this was, in fact, a
25 competitor and that they had an agreement

1 L. Grippo

2 with us and we could talk to them about it,
3 I'm quite certain in many instances Amy's
4 team was either able to save them, or I know
5 for a fact that they were very apologetic
6 about what had happened. They misunderstood
7 what was occurring, and once -- and that's
8 when we started reminding them, okay, well,
9 you know, we've had a relationship, we've
10 been supporting you for a number of years,
11 you know, please give us the respect of at
12 least giving us notice prior to canceling and
13 the program ends. So they were sometimes
14 just very remorseful and would still decide
15 to go and change. But other times they would
16 be sort of -- I don't know if "disgusted" is
17 too strong a word, but not necessarily liking
18 what was happening, and they would decide to
19 stay with us.

20 MR. O'BRIEN: I move to strike the
21 answer as nonresponsive.

22 Q. My question was, can you identify a
23 single practice that you believe switched
24 from HAN to ContextMedia because of something
25 wrong that ContextMedia did?

1 L. Grippo

2 MR. COWAN: Objection. Asked and
3 answered. Go ahead.

4 A. A single practice, I cannot.

5 Q. A couple of times now you've
6 suggested that you believe that ContextMedia
7 posed as HAN or represented itself as HAN
8 from time to time. Did I understand that
9 correctly?

10 A. Yes.

11 Q. Can you identify a single practice
12 where that ever happened?

13 A. Not from memory, no.

14 Q. In fact, isn't that sort of
15 nonsensical?

16 MR. COWAN: Objection.

17 Q. By that I mean don't you understand
18 that ContextMedia, whether it's its sales
19 tactics or something you approve of or
20 disapprove of, the thrust of the tactics were
21 we are different than HAN.

22 A. Um-hmm.

23 Q. We are different than the
24 competition. Now you say they said things
25 they shouldn't have said in trying to make

1 L. Grippo

2 the point they were different. But wasn't
3 the thrust of their sales efforts that we are
4 different?

5 A. I think there's a difference in how
6 you communicate the fact that you're
7 different. If you are specifically
8 targeting, which it certainly appeared as
9 though they were specifically targeting our
10 customers, and they were aware that they had
11 our programming, and they were saying
12 disparaging things about the content and the
13 program, I don't know that that's a sales
14 tactic that I would ask my team to employ.

15 Q. No, no. But you make my point.
16 What you just said shows that it's
17 nonsensical for you to believe that
18 ContextMedia was posing as HAN. If
19 ContextMedia is posing as HAN, why would it
20 be disparaging, then, its own product?

21 A. There were -- and, again, I had
22 heard from Amy's team, and we had a couple of
23 practices -- so it started -- it was a
24 spectrum. So early on we had heard, okay,
25 there's a competitor out there, they're going

1 L. Grippo

2 into practices and they're taking our
3 equipment down, and they're putting their --
4 saying that it's an upgrade and they're
5 putting their equipment up. Again, they
6 weren't speaking directly to me. I was a
7 manager over the area. In many instances it
8 was my employees that were going into these
9 practices.

10 So most cases it was not a
11 conversation directly to me. I was aware of
12 them because I was trying to help put
13 together some strategies so that we could
14 retain our customer base. And so I had heard
15 that this was happening. I had heard
16 something similar happened up in Buffalo.
17 Amy made me aware. She said make sure that,
18 you know -- so I shared with it with my
19 employee here on Long Island. I said, Diane,
20 if you hear of anything like this happening,
21 please let me know. And then we started to
22 -- I think it only happened a couple of times
23 where they were -- had claimed that it was an
24 upgrade. And then it was more just going in
25 and -- they actually didn't go in. I don't

1 L. Grippo

2 believe they had outside salespeople. I
3 believe they did most of their work on the
4 phone, because that's what I would hear from
5 practices when I did go out and speak to
6 them. Again, like I said earlier, they were
7 calling repeatedly trying to get in. And
8 then once they had them on the phone, they
9 were it seemed specifically targeting our
10 practices and saying very disparaging things
11 about it, about us, and how much better they
12 were, and, you know, again, we'll come in,
13 we'll take down the equipment, and we'll put
14 ours up, and, you know, no skin off your
15 back. They didn't have to do anything, the
16 practices.

17 And then the next spectrum was,
18 okay, we at least got them and the practices
19 through a campaign to say, listen, if you're
20 looking to change, talk to us, help us
21 understand why, but at least give us the
22 notice. You know, you are under contract,
23 and you can't just take our equipment down
24 and ship it back to us. So it was, you know,
25 over a period of time there were a lot of

1 L. Grippo

2 different things that occurred. As far as
3 direct communication to me, not all of it was
4 directly to me. It was through my colleagues
5 and through my direct reports.

6 Q. It sounds like, based upon some
7 answers you've given recently, that you would
8 agree with me that Amy Finley would be far
9 more knowledgeable than you about why
10 practices switched from HAN to ContextMedia?

11 A. Correct.

12 Q. You mentioned a scenario a little
13 while ago where you said you were able to
14 save the practice. Do you remember that?

15 A. Me specifically -- I said we --

16 Q. The company.

17 A. We the company, correct.

18 Q. And HAN maintains save statistics,
19 does it not?

20 A. Yes.

21 Q. And that's part of the CMS database
22 as well; right?

23 A. Correct.

24 Q. And part of HAN's problem with
25 ContextMedia was that it was thwarting HAN

1 L. Grippo
2 receiving the 30 or 60-day notice, whichever
3 notice period was in play; right?

4 A. Um-hmm.

5 Q. You have to answer out loud.

6 A. I'm sorry. Yes.

7 Q. And the purpose for that notice
8 period is to try to save the practice; right?

9 A. Correct.

10 Q. You have recommended internally to
11 HAN from time to time that HAN take down
12 ContextMedia's equipment; right?

13 A. I have not. I suggested that
14 perhaps we should consider it one time. I
15 said I would never normally consider
16 something like that, because I don't think
17 it's ethical, but in this situation, and I
18 forget, it was one of the practices in
19 Queens, I think, we didn't end up doing that.

20 Q. Did you see some emails on this
21 subject in the last couple of weeks?

22 A. Yes.

23 Q. And those were shown to you by
24 Mr. Cowan or someone at his firm?

25 A. Yes.

1 L. Grippo

2 Q. What else was shown to you by
3 Mr. Cowan or someone at his firm besides that
4 email?

5 MR. COWAN: I think that's going to
6 invade work product.

7 MR. O'BRIEN: You take that
8 position? Different lawyers do. I
9 don't. But that's fine.

10 MR. COWAN: You know, here's --

11 MR. O'BRIEN: I understand.

12 MR. COWAN: Nothing that I've shown
13 her has not been produced in this case.
14 I've selected emails. It doesn't bother
15 me if you want to try to spend time
16 asking her what we reviewed today. I
17 just want to make sure I get time at the
18 end of this to ask a few questions. But
19 do that if you want. I won't object.

20 Q. You reviewed some emails; right?

21 A. Correct.

22 Q. Can you recall anything else you
23 reviewed?

24 A. No. He just showed me some emails.

25 Q. Do you have any files from your

1 L. Grippo

2 days at HAN?

3 A. I threw out most of -- most of my
4 stuff.

5 Q. Upon your departure?

6 A. Yeah.

7 Q. Had you already been approached
8 before your departure about collecting and
9 preserving things for the lawsuit?

10 A. No.

11 Q. Did you basically throw out
12 everything you had with regard to the
13 business?

14 A. Pretty much.

15 Q. Were you kind of a pack rat with
16 your emails?

17 A. Over the course of nine years, I
18 kept -- my memory was exploding, so.

19 Q. Not the memory in your head, the
20 memory in --

21 A. No. The memory in my -- yes. I
22 was always getting those error messages, so.

23 Q. Did any competitor besides
24 ContextMedia ever take down HAN's equipment?

25 A. Not that I'm aware of.

1 L. Grippo

2 Q. Did HAN ever take down any
3 competitor's equipment? You already talked
4 about ContextMedia. Now I asked you a
5 broader question.

6 A. Not that I'm aware of.

7 Q. You left, again, in August of 2013?

8 A. September.

9 Q. September. Are you aware that
10 practices were continuing to be switched out
11 from HAN to ContextMedia up until the time
12 you left?

13 A. I believe so. I couldn't swear to
14 the date.

15 Q. Was there any ebb and flow to it,
16 as far as you were concerned, where it seemed
17 to be more switch-outs any point in time than
18 other points in time, or was it pretty much
19 steady?

20 A. I'm not certain.

21 Q. It's not something you tracked?

22 A. Well, again, I stepped away from
23 that side of the business for a little over a
24 year, and in terms of recruiting the
25 physician practices, I was more focused on

1 L. Grippo

2 the technology side. And then when I came
3 back in, I was surprised, so the beginning of
4 2014 -- 2012. 2013.

5 Q. 2013.

6 A. Surprised to hear that this was
7 still, you know, an issue that we were
8 facing.

9 Q. Okay. You continued to face that
10 up until the time you left; right?

11 A. I believe so, yes.

12 Q. And you say technology side. Maybe
13 you already told me and I just missed it.
14 What do you mean by that?

15 A. We acquired PatientPoint, the
16 coordinated care division.

17 Q. I see. I understand that one of
18 the responsibilities Amy Finley's team had
19 was to monitor and follow and track the
20 return of the HAN equipment after a practice
21 switched. Does that square with your
22 understanding?

23 A. I'm not certain that fell on Amy's
24 team.

25 Q. Who do you think had that

1 L. Grippo

2 responsibility?

3 A. Monitoring of equipment?

4 Q. Yeah. Practices switched, now
5 who's going to -- I'm from southern Illinois,
6 so. Do you know what bird dog mean?

7 A. No.

8 Q. To follow and stay on top of --

9 A. Oh, okay.

10 Q. -- what's happening to the
11 equipment.

12 A. I would think that would be a
13 combination of Amy's team and Kimberly's
14 team.

15 Q. Do you know Vida Albert?

16 A. I do.

17 Q. Do you know if that was her
18 responsibility?

19 A. It could have been. I'm not
20 exactly sure who was responsible.

21 Q. But in any event, it was not your
22 responsibility?

23 A. No.

24 Q. Or anybody on your team?

25 A. Correct.

1 L. Grippo

2 Q. So while you couldn't name a
3 practice that you felt had switched from HAN
4 to ContextMedia due to wrongful conduct by
5 ContextMedia, would you agree that some
6 practices switched from HAN to ContextMedia
7 simply due to fair competition?

8 MR. COWAN: I'm going to object to
9 form. I think she did identify a
10 practice or two. But go ahead.

11 A. Could you repeat the question.

12 Q. Yes. I said that while, by my ear,
13 you did not identify a single practice that
14 you felt had switched from HAN to
15 ContextMedia due to wrongful conduct by
16 ContextMedia, would you agree with me that
17 you know that certain practices, not specific
18 ones, but some practices switched from HAN to
19 ContextMedia simply due to fair competition?

20 MR. COWAN: Object to the form. Go
21 ahead.

22 A. So you're asking me if I believe
23 that some practices who switched from Healthy
24 Advice programming to ContextMedia, if they
25 did that due to fair competition and --

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1 L. Grippo

2 Q. Right.

3 A. I'm sure there are, yes.

4 Q. Do you have any way as you sit here
5 today to make a judgment about how many
6 practices switched due to what you feel was
7 wrongful conduct and how many practices
8 switched due to fair competition?

9 A. I do not.

10 Q. Do you know if any analysis was
11 undertaken like that within the company while
12 you were there?

13 A. I do not. I will say it was always
14 challenging, whether it was ContextMedia or
15 any other perceived competitor, to, you know,
16 with practices in terms of the reasons that
17 they actually told you why they were leaving,
18 you know, no one likes confrontation, right.
19 So we tried the best that we could to get
20 accurate data with regard to the reasons.

21 Q. And that's all you could do --

22 MR. COWAN: Go ahead. Wait.

23 Q. I didn't mean to interrupt.

24 MR. COWAN: Go ahead.

25 A. But, you know, that was not always

1 L. Grippo
2 a possibility. They may have just been
3 telling us something because they thought
4 that's what we would want to hear or to, you
5 know, let us down easy kind of thing.

6 Q. And what you just said is your
7 sheer speculation; right?

8 A. From talking to practices, yeah. I
9 mean yes.

10 Q. I mean you're speculating that they
11 didn't tell you the whole truth?

12 A. The whole story?

13 Q. Right.

14 A. Right, because when you try --
15 Amy's team would get one answer, and then I
16 would call or one of my team would call if
17 they weren't being responsive. And likely we
18 would then get a different story. So, again,
19 you know, the data is only as good as,
20 unfortunately, what was in the people's --

21 Q. Can you identify for me a single
22 practice where that happened, that is, one
23 person from HAN called and got one reason,
24 and then another person from HAN called and
25 got a different reason?

1 L. Grippo

2 A. I can't give you a specific, but
3 I'm sure there are many.

4 Q. I'm sorry?

5 A. I'm sure there are many, but I
6 cannot give you a specific.

7 Q. And if you wanted to try to get
8 your arms around that as best you could right
9 now, the only thing you could do is look at
10 the CMS database; right?

11 A. Correct.

12 Q. Do you feel like in nine years of
13 doing that, that being what you were doing at
14 HAN, selling to practices, that you have a
15 pretty good feel for what factors practices
16 think are important in deciding which point
17 of care provider to choose?

18 A. Yes.

19 Q. I mean that's kind of the nuts and
20 bolts of what you were doing, you need to
21 know those things in order to be effective;
22 right?

23 A. Correct.

24 Q. And you endeavored to do your best
25 to know those things; right?

1 L. Grippo

2 A. Yes.

3 Q. And what things, based upon your
4 nine years of experience, were important
5 considerations or factors to a practice in
6 making a -- if I say POC, would you
7 understand that to be point of care?

8 A. (Indicating).

9 Q. -- in making a POC provider
10 decision?

11 A. Specific to the educational
12 programming in the waiting room you're
13 referring to.

14 Q. Specific to PCN and DHN, yeah.

15 A. Okay.

16 MR. COWAN: ACN.

17 Q. ACN.

18 A. One -- what we spoke to is the
19 quality of our programming, the fact that all
20 of -- I think that it's important for the
21 providers to know that we had a team of
22 medical writers that was creating all of our
23 content that was reviewed by a board of
24 physicians, so that they know that it's
25 credible content in their waiting room, the

1 L. Grippo

2 fact that they the ability to review it and
3 to pull any content if it was not, you know,
4 something that they would endorse.

5 They appreciated the fact that it
6 was silent programming, because, you know, we
7 would often hear that it was extremely
8 disruptive to the staff and to the patients
9 to hear the same program repetitively. So
10 that was something that we always spoke
11 about, the fact that we were a guest in their
12 waiting room, that we wanted to give them the
13 educational option, but we're not going to
14 be, you know, in their face about it. And
15 that resonated very well with the physician
16 practices and administrators.

17 And the fact that they were able to
18 personalize it. They had eighteen messages
19 that would speak specifically to their
20 patient population. And that was really the
21 only time that we had sound is there would be
22 some music playing behind those messages to
23 draw the patients', you know, attention to
24 what the practice felt was relevant.

25 Q. The three things that you just gave

1 L. Grippo

2 me, quality of programming, silent, and the
3 ability to personalize, those are factors
4 that you thought were important selling
5 points for HAN's product; right?

6 A. And I thought that's what you asked
7 me. I'm sorry.

8 Q. No. My question was broader than
9 that, and that is, what factors did practices
10 consider to be important in making a POC
11 provider decision? That was my question.

12 A. And from my experience in talking
13 with hundreds of practices throughout the
14 country, the number one concern for the
15 larger practices, not always the smaller
16 ones, was making sure that they had quality
17 content.

18 Q. And a practice could be very
19 concerned with quality content and
20 nonetheless choose a competitor of HAN's if
21 they thought the competitor had a higher
22 quality content; right?

23 A. Absolutely. We had many
24 competitors.

25 Q. But that's an important factor;

1 L. Grippo

2 right?

3 A. Um-hmm.

4 Q. And you said silence is an
5 important factor.

6 A. Sorry. Yes.

7 Q. Right? You said silence was an
8 important factor; right?

9 A. That was an advantage to our
10 programming. That was also something that
11 was asked about us from many companies.
12 Accent Health was really our largest
13 competitor always, and that has sound. So in
14 speaking with physician practices, what I
15 would hear is, oh, we had something in the
16 past, it was a lot of noise in the waiting
17 room, we don't want that, and so I found that
18 that was something that they really enjoyed,
19 the fact that ours was silent, so.

20 Q. But didn't you find that a lot of
21 practices preferred sound, and for that
22 reason they preferred ContextMedia over HAN's
23 product?

24 A. That was not my experience.

25 Q. Well, didn't you know that in

1 L. Grippo

2 reaction to that competitive pressure, HAN
3 significantly increased the amount of sound
4 in its product?

5 A. In our rheumatoid program?

6 Q. Yes.

7 A. I did not.

8 Q. Did you know video was an important
9 factor to many practices?

10 A. The ability to upload their own
11 video regarding the practice, yes.

12 Q. No. The ability to have video that
13 involved real-life characters, real action
14 video.

15 A. No. I was only asked if they would
16 be able to upload their own videos that they
17 had created.

18 Q. So you're not aware that in
19 response to many practices telling HAN that
20 they wanted more video, that HAN has
21 significantly increased the amount of its
22 video content?

23 A. I was not aware that they had
24 increased sound or video content into the
25 program, no.

1 L. Grippo

2 Q. Were you aware that some practices
3 thought it was important for their patients
4 to also see weather and news tickers?

5 A. Yes.

6 Q. And didn't HAN react by providing
7 more of that kind of content as well?

8 A. Correct, to most of our programs.

9 Q. Is customer service an important
10 factor?

11 A. Yes.

12 Q. And the experience with the sales
13 representatives is an important factor;
14 right?

15 A. Yes.

16 Q. Did you learn in your years of
17 doing this that a lot of practices preferred
18 a much longer loop of content than HAN was
19 able to offer?

20 A. We had heard that from -- we had
21 received some feedback from practices with
22 regards to the loop and the length of the
23 loop, not specific to ContextMedia, just in
24 general. And so we had changed the format so
25 -- I'm not going to explain it properly, but

1 L. Grippo
2 essentially if there was a 30-minute loop,
3 there was content for longer than 30 minutes,
4 and it was interchangeable, so that if a
5 patient was sitting there for more than
6 30 minutes, it wouldn't look exactly the
7 same. So that was something that we had
8 heard from a mix of practices, not just
9 rheumatology.

10 Q. Right. And that's a change that
11 HAN made to make its content more attractive
12 to practices; right?

13 A. Correct, realizing that wait times
14 were a little longer, so we were trying to be
15 responsive to that.

16 Q. Did practices also tell you that
17 they liked the fact that ContextMedia's
18 content had sort of three partitions on the
19 screen providing different information? Did
20 you ever hear that?

21 A. Specific to me, I remember speaking
22 to a customer in I think it was the
23 Carolinas, and they had said the staff -- and
24 the receptionist, I was just asking her about
25 the programming, and she had said something

1 L. Grippo
2 about the, you know, she really liked the
3 recipes and the cooking segments and that.
4 And so I did hear that comment.

5 Q. And those were things that HAN was
6 not able to offer at the time; right?

7 A. We were not.

8 Q. And did you also hear that
9 practices preferred ContextMedia's content
10 because the practice had the freedom and
11 flexibility to change the educational
12 content, not the other content, but the
13 educational content where HAN did not permit
14 that?

15 A. I did not.

16 Q. Did you hear that
17 condition-specific practices treating
18 diabetes and condition-specific practices
19 treating rheumatoid arthritis preferred
20 ContextMedia's content over HAN's because
21 they thought the content was more specific to
22 those conditions?

23 A. No. I think if I heard anything,
24 it was that more of an entertainment value to
25 ContextMedia's programming. With regard to

1 L. Grippo
2 the educational content, we definitely had
3 more educational content in our program. It
4 was all education other than the sponsor
5 messages and the individualized -- the
6 personalized messages for the practice.

7 Q. Do you consider recipes and
8 exercise tips and advice to be entertainment
9 or education?

10 A. More entertainment.

11 Q. More entertainment. Okay.

12 A. And more entertainment in many ways
13 for the staff is what I would hear when I was
14 talking, because the patients, you know, may
15 or may not actually be able to sit there
16 through an entire cooking segment.

17 Q. Would you agree with me that
18 practices are free to choose whatever they
19 want to have in their waiting room?

20 A. Absolutely.

21 Q. They can choose your product;
22 right?

23 A. Um-hmm.

24 Q. Or ContextMedia's?

25 A. Yes.

1 L. Grippo

2 Q. Or cable television?

3 A. Yes.

4 Q. Or nothing?

5 A. Yes.

6 Q. That's their choice; right?

7 A. Correct. And that -- like I said,

8 we had many competitors over the years, and

9 we would, you know, lose practices. It's not

10 as though we just started losing practices

11 when, you know, RHN came along. We certainly

12 had lost -- it was more what we were hearing

13 from practices, again, not coming directly to

14 me, with regard to some of the tactics that

15 they were utilizing. So that was -- we've

16 lost many practices to Accent Health because

17 of the sound, because they have a pediatric

18 program. So it was just more, again, it

19 seemed targeted, and it just seemed very

20 unethical, in my opinion.

21 Q. The ACN network is relatively

22 small; right?

23 A. Correct.

24 Q. It's a small market; right?

25 A. Yeah. It's a --

1 L. Grippo

2 Q. Extremely small compared to the PCN
3 network; right?

4 A. Yes.

5 Q. Let me hand you and your counsel
6 what was previously marked as Deposition
7 Exhibit 25. Take whatever time you want to
8 look at this document, and let me know when
9 you're ready for me to ask you a question or
10 two.

11 A. Okay.

12 Q. Do you remember this situation
13 involving the Lakeside practices?

14 A. I do now.

15 Q. Well, this Lakeside practice or
16 network of practices, was it in your
17 territory in February 2013?

18 A. No. It was in California.

19 Q. So why does this get kicked up to
20 you?

21 A. I believe it was -- February of
22 2013. I believe they asked me to get
23 involved, again, most likely simply because
24 of all the changes going on, and given my
25 familiarity with the programs, that I could

1 L. Grippo
2 speak to her and try to assist with saving
3 the practice. But, again, that's all
4 speculation. I don't quite -- I'm not quite
5 certain why it was sent to me.

6 Q. I would like to ask you a question
7 about what's written on Page 4.

8 A. Okay.

9 Q. And this is in the middle of a long
10 email that Laurie Smith is writing to folks,
11 including you. As I read this, she's
12 detailing all the efforts that she has
13 exerted to try to save this very important
14 practice; right?

15 A. Yes.

16 Q. And in the last paragraph on Page 4
17 about the middle of that paragraph it's
18 written that Pam -- and Pam is the
19 representative of the practice; right?

20 A. Yes.

21 Q. Said that the decision has already
22 been made and contracts were signed. That's
23 contracts with ContextMedia; right?

24 A. I'm sorry. I'm not seeing that.

25 Q. You're on Page 4?

1 L. Grippo

2 A. Yes, I am.

3 Q. In the middle of that last
4 paragraph, roughly halfway in there is a
5 sentence that begins "Pam said that the
6 decision."

7 A. Okay. "Pam said the decision has
8 already been made and contracts were signed."

9 Q. And that's the practice telling HAN
10 that the practice has already signed
11 contracts with ContextMedia; right?

12 A. It seems that's the case, yes.

13 Q. And then Ms. Smith explains she
14 told the practice that "often in our business
15 the contracts are not always binding, and I
16 just want to make sure the decision makers
17 know about our suite of products before we
18 begin removing the monitors." Do you see
19 that?

20 A. Yes.

21 Q. So this is a situation where
22 ContextMedia has not taken down the
23 equipment; right?

24 A. Correct.

25 Q. And HAN is getting notice from the

1 L. Grippo

2 practice; right?

3 A. Yes.

4 Q. And HAN is doing its level best to
5 try to save the practice; right?

6 A. Yes.

7 Q. And one of the things it does to
8 try to do that is tell the practice that the
9 contracts that the practice has signed with
10 ContextMedia aren't any good; right?

11 MR. COWAN: Objection. That's not
12 what it says. Go ahead.

13 Q. It tells the practice that the
14 contracts that ContextMedia has signed with
15 the practice are not always binding.

16 MR. COWAN: Objection. That's not
17 what it says. Go ahead.

18 A. It says the contracts are not
19 always binding. I'm not quite certain what
20 Laurie meant by that.

21 Q. Well, did you have a problem with
22 her making that statement?

23 A. I don't know that I even read it
24 that closely when I saw it the first time.

25 Q. Well, since the email is directed

1 L. Grippo

2 to you, among other people, do you recall
3 saying wait a minute, Laurie, you can't say
4 that, that's not kosher?

5 A. Laurie reported to Amy, not to me.
6 And I put some of my thoughts here with
7 regard to the situation. So I never said
8 that to her, no. I never took exception with
9 that comment.

10 Q. And should I understand your answer
11 at least in part to be that if someone was
12 going to take exception to that, it should
13 have been Amy; right?

14 A. If someone were to take exception
15 with that, then I would say yes, it should be
16 Amy. My understanding, though, was that
17 this, and one of the points that I made, is
18 that Pam was obviously not the decision
19 maker. So, therefore, how could she be
20 certain that contracts were already executed.
21 And I do not today know that any contracts
22 were executed. I know -- I believe we ended
23 up maintaining this customer, but I was not
24 involved with that. Chris Martini ended up
25 needing to be in California anyway, so he

1 L. Grippo

2 took over. So all I did was sort of give my
3 two cents, like let's get our heads together
4 and figure out how we can keep this from
5 happening.

6 There was a larger issue here, that
7 they were considering leaving us because we
8 weren't accommodating their cardiology
9 practice. And we had a cardiology program.
10 So the fact that ContextMedia with the
11 diabetes and a rheumatology program could
12 better accommodate them did not seem to make
13 sense. So that was the larger issue, that we
14 as an organization would lose a customer of
15 this size because we weren't willing to
16 enroll one of their cardiology programs in
17 that program, because that was on a wait
18 list, so -- I'm talking, but I don't know if
19 I'm answering your question.

20 Q. You're actually not, but.

21 A. Let me just keep talking?

22 Q. No, not really. We've got a
23 limited amount of time here.

24 A. Okay.

25 Q. But in any event, you took no

1 L. Grippo
2 issue, as far as you know, with her telling a
3 practice that had signed a contract with
4 ContextMedia that it could go ahead and
5 basically continue to do business with HAN;
6 right?

7 A. If I thought that that's what she
8 was saying, to just completely ignore a
9 signed contract, then I don't -- I would take
10 exception with that. I would want to better
11 understand who signed the contract, when they
12 were executed, and what that contract was.
13 But I'm not taking this to be ignore
14 ContextMedia's contract. She was simply
15 pointing out that it may not be binding.

16 Q. And the reason she's saying that is
17 to try to save the practice; right?

18 A. It looks like that's -- she's just
19 asking her to look to see if it's a binding
20 contract. Yes.

21 MR. O'BRIEN: Can we take a short
22 break. We've been going about an hour.

23 MR. COWAN: Sure.

24 VIDEOGRAPHER: The time is
25 2:46 p.m. on March 26, 2014. This is

1 L. Grippo

2 the end of tape number one.

3 (Recess taken from 2:46 p.m. to
4 2:56 p.m.)

5 VIDEOGRAPHER: The time is
6 2:56 p.m. on March 26, 2014. This is
7 tape number two. We're back on the
8 record.

9 Q. The exhibit we just talked about
10 that's still in front of you, Exhibit 25,
11 it's dated February 19th, 2013, at least the
12 last email in the chain; right?

13 A. Yes.

14 Q. I would now like to show you what
15 has previously been marked as Defendant's
16 Exhibit 33. It looks like a 53 to some, but
17 it's a 33.

18 I don't see you on this email, but
19 I'm going to ask you a question about it
20 anyway. Take whatever time you want to look
21 at it.

22 A. I should have gone the other way.
23 It would have made more sense, right.

24 Q. Usually.

25 A. Sorry about that. I don't even

1 L. Grippo
2 know if I understand what this is, so. I'll
3 try.

4 Q. Well, the email that is
5 Ms. Finley's at the bottom of Page 1 says
6 from Amy Finley, Wednesday, 20, 2013, 7:52
7 a.m. Do you see that?

8 A. Um-hmm.

9 Q. And that's the next day after
10 Ms. Smith is telling a practice that their
11 contract with ContextMedia may not be
12 binding; right?

13 A. Laurie sent that on -- are you
14 asking me to confirm the date?

15 Q. Yeah. It's a day later; right?

16 A. I don't think so.

17 Q. I'm sorry. Hers is the 15th, the
18 last email on the chain. So it's five days
19 later.

20 A. Yes.

21 Q. And you said that if someone was
22 going to correct Ms. Smith about what she was
23 saying about binding contracts, it would be
24 Ms. Finley's job; right?

25 A. Yeah. Amy reported to -- I mean

1 L. Grippo

2 she reported to Amy.

3 Q. And here Amy is writing to Chris
4 Martini; right?

5 A. Correct.

6 Q. And he's the president of the
7 business at the time; right?

8 A. Correct.

9 Q. And Amy says, "I guess this
10 happened when we called. It shouldn't be a
11 clause. This program is in the exam room,
12 not the waiting room. Their agreement, like
13 ours, states no one else can be in the
14 waiting room. But, again, these are not
15 binding contracts." Do you see that?

16 A. I do.

17 Q. Had you heard Ms. Finley say that
18 from time to time, that HAN's contracts with
19 the practices weren't binding contracts?

20 A. Whether or not -- I would guess
21 that I've probably heard Amy say that. I
22 have heard with just regards to our
23 agreements in general that they were not
24 necessarily binding, that if a company were,
25 you know, if we were to try or we were to sue

1 L. Grippo

2 or whatever, but that they may not hold up.

3 So I guess that's what it means by binding.

4 Q. It does.

5 A. But when that would typically come
6 up was with regard to -- with regard to
7 Accent Health, because we didn't have a
8 clause, we did not demand exclusivity in the
9 waiting room initially, so we could coexist
10 with them. And so we would sort of indemnify
11 the practice to say that if Accent Health
12 took, you know, exception with the fact that
13 we were there, if that was a clause, and that
14 was a term, again, not being a lawyer, that
15 was often used, that typically the agreements
16 are not legally binding.

17 Q. Did Lisa Grippo ever say these
18 agreements are not legally binding?

19 A. I don't -- I mean I couldn't swear
20 for certain, but it's not a term that I would
21 use, that I recall using frequently.

22 Q. But you may have said it on
23 occasion?

24 A. Of course. I may have, yes.

25 Q. And Mr. Martini, the president of

1 L. Grippo

2 the company, did you ever hear him say that
3 HAN's contracts with the practices were not
4 legally binding?

5 MR. COWAN: Objection. Go ahead.

6 A. I have not.

7 Q. How about Mr. Campbell?

8 MR. COWAN: How about what?

9 Q. Did you ever hear Mr. Campbell
10 comment that the contracts that HAN had with
11 the practices are not legally binding?

12 A. No. I did not interact with Tom
13 regularly really, or Chris until the few
14 months prior to -- until 2013.

15 Q. And that's when this is; right?

16 A. Correct. But he was the president
17 of the hospital division. So with regard to
18 physician practices, we didn't have a lot of
19 -- he was trying to -- he was still learning
20 what was going on on the physician side.

21 Q. Let me hand you and your counsel
22 what was previously marked as Defendant's
23 Deposition Exhibit 26.

24 MR. COWAN: Thank you.

25 Q. This is a reproduction from HAN's

1 L. Grippo

2 files, I'll represent to you, with the file
3 label "Competitor Info." Do you recall while
4 you were at HAN seeing a Competitor Info file
5 on ContextMedia?

6 A. Do I recall seeing a -- I know that
7 we started a collection of emails. I had
8 referred to that earlier. We were trying to
9 get everything documented into CMS. I want
10 to say yes, but I'm trying to recall where we
11 would have -- where it would have been
12 housed. I believe we may have started
13 collecting -- we had to have had competitor
14 information. I just, umm...

15 Q. It's a natural thing to do to try
16 to collect information --

17 A. Absolutely.

18 Q. -- about your competitors.

19 A. About the competitors. I just
20 don't know...

21 Q. Well, the file you're flipping
22 through now, do you recall seeing this
23 particular file before?

24 A. I recall seeing all of this
25 information. I honestly don't recall it

1 L. Grippo

2 being in a particular file.

3 Q. And in fairness to you, there's
4 some emails in here that you're on. So there
5 are numbers in the bottom right-hand corner
6 of each of these pages that begin HAN. And
7 I'll use those to guide you to the pages I
8 want to ask you questions about.

9 A. Okay.

10 Q. So if you look at HAN 3192 for
11 starters. And this is an email from Amanda
12 Devlin to you and others; right?

13 A. Yes.

14 Q. And it looks like she's reporting
15 on viewing ContextMedia's loop in a physician
16 practice. Is that how you read this?

17 A. Yes.

18 Q. And you were okay with that; right?

19 A. Yes.

20 Q. You don't think HAN's content loop,
21 for example, is confidential or trade secret,
22 do you?

23 A. That our loop -- I'm sorry.

24 Q. Your loop that plays in the
25 practice waiting room, do you think that's a

1 L. Grippo

2 trade secret?

3 A. No.

4 Q. You don't require physicians to
5 have patients sign NDAs to enter the waiting
6 room; right?

7 A. No.

8 Q. Now, were you aware at this time
9 frame -- first of all, you know Amanda
10 Devlin; right?

11 A. Yes.

12 Q. And were you aware in this time
13 frame that one of her responsibilities was
14 gathering intelligence on ContextMedia?

15 A. I was aware, yes. We actually --
16 we had asked the field, because we were
17 interested in putting together something like
18 this. So I knew that we were compiling
19 competitor information as they were out in
20 the field to -- if they could take a picture
21 of the screen so we knew what it looked like,
22 and if they had a chance, to let us know a
23 little bit about the content.

24 Q. And here she sat and looked at the
25 content and then gives you a summary of

1 L. Grippo

2 what's in it; right?

3 A. Correct.

4 Q. Do you know if she ever took a
5 video of the content?

6 A. I do not.

7 Q. But there wouldn't have been a
8 problem with that either; right?

9 A. If they had taken -- if she had
10 taken a video of their content to show us
11 what it was like?

12 Q. Right.

13 A. No.

14 Q. And then if you turn to page HAN
15 3180, there's another email from Ms. Devlin.
16 It runs on for a couple of pages. And here
17 she's reporting on a conversation she had
18 with a salesperson from ContextMedia; right?

19 A. Yes.

20 Q. And she's sending this information
21 to you, Ms. Finley, Ms. Brewer, and then who
22 are all those other people who are cc'd?

23 A. They are sales reps.

24 Q. And so she's providing information
25 about ContextMedia to sales reps to help the

1 L. Grippo

2 sales reps sell against ContextMedia; right?

3 A. To help -- I don't know that this
4 is necessarily a sales document. This was
5 more just documenting what we found out about
6 their program.

7 Q. Well, what would be the conceivable
8 reason for giving it to sales people if not
9 to use it as ammunition to sell against
10 ContextMedia?

11 A. Well, I mean yeah, absolutely. At
12 the time we were trying to figure out who
13 they were and what they were doing and more
14 information about their loop.

15 Q. But it wasn't idle prurient
16 curiosity; right?

17 A. No. It was because we were hearing
18 all of this from our practices about them,
19 yes.

20 Q. And she indicates that she spoke to
21 the sales rep for 30 minutes; right?

22 A. Yes.

23 Q. And she got detail on their
24 program; right?

25 A. Yes.

1 L. Grippo

2 Q. And she got all this information by
3 lying; right?

4 A. She misrepresented who she was,
5 yes.

6 Q. You don't think she lied?

7 A. Do I think -- yes, she did. She
8 misrepresented something.

9 Q. And is that something you approved
10 of?

11 A. I do not approve of lying, no. I
12 do not approve of -- as I told you earlier,
13 the only reason I'm here is because of --
14 that I truly believe, based on my time there
15 and what I heard from practices, that they
16 were engaging in unethical behavior. Would
17 this, could this be construed as unethical
18 behavior, yes. I'm quite certain that I
19 received calls from competitors over the
20 years asking me to provide information to
21 them and they were misrepresenting
22 themselves. I'm not saying that it's
23 something that I have ever asked anyone that
24 works for me to do. But we certainly, when
25 we were in a practice, we would always probe

1 L. Grippo

2 to get additional information with regards to
3 the competitor.

4 Q. But this is different, though.

5 This is not being at a practice like the
6 earlier email. This is lying to a competitor
7 in order to get details about their program;
8 right?

9 A. Yes. She misrepresented who she
10 was.

11 Q. And she got quite a bit of detail
12 from him; right?

13 A. Yes.

14 Q. And can you tell me anything in
15 here that Mr. Zmick of ContextMedia told
16 Ms. Devlin when she was telling that she's a
17 practice interested in the program, anything
18 in here that was misleading or unethical or
19 not truthful that he said to Ms. Devlin?

20 A. Well, RHN is the only company that
21 has a robust program specific to the
22 specialty on the market today. That would be
23 incorrect.

24 Q. You think that's incorrect?

25 A. Yes. He told me that he switches

1 L. Grippo
2 out Accent Health at least two to five times
3 a week and it would be no problem to make the
4 switch. Sorry. I'm just reading it. I
5 honestly do not know their programming well
6 enough to know whether or not it does all
7 that he's saying it does here.

8 Q. In fairness to you, it says some
9 things later on about Healthy Advice, which
10 you would probably take issue with. But it
11 looks like the gist of this is he's selling
12 on the strength of the ContextMedia content;
13 right?

14 A. Correct.

15 Q. Now, if you turn a little farther
16 into this -- actually, I'm not going to ask
17 you about that. That's fine. Let's move on.

18 Let me show you and your counsel
19 what was previously marked as Defendant's
20 Exhibit 42. It looks like this is an email
21 where a comment from the CMS database is
22 being forwarded. It's unclear who it was
23 forwarded to, but in any event, you end up
24 responding; right?

25 A. Um-hmm.

1 L. Grippo

2 MR. COWAN: Yes?

3 A. Yes. I'm so sorry.

4 Q. And it was reported to you that a
5 practice was going to go with HAN, and then
6 the doctor went to a conference and decided
7 to go with ContextMedia. Do you see that?

8 A. Yes.

9 Q. And the doctor came away from the
10 conference thinking that ContextMedia's
11 content was bilingual and more
12 specialty-specific; right?

13 A. Correct.

14 Q. Now, this is a situation, is it
15 not, the way I read this, not of a switch-out
16 but a head to head competition it looks like.
17 Is that how you read it?

18 A. I'm not certain that -- but it
19 appears to be that way, yes.

20 Q. And it looks like maybe you had
21 already delivered the equipment even though
22 -- it's a little hard to parse this, so I'm
23 not sure if it was a head to head competition
24 or they had already signed up with you and
25 the equipment hadn't been installed. But in

1 L. Grippo
2 any event, the comment reflects that after
3 the conference, the doctor's decision was
4 final because he felt like he liked
5 ContextMedia's content hands down better;
6 right?

7 A. He says that it was bilingual and
8 he thought it was more specialty-specific.

9 Q. And then she goes on to report that
10 his decision was final to go with
11 ContextMedia?

12 A. Yes.

13 Q. And that the doctor liked their
14 content hands down better; right?

15 A. Yes.

16 Q. And then you write, "RHN is in
17 Spanish, too. I was not aware." And you go
18 on to say, "I have sent out a ton of
19 supporting info for choosing us over them";
20 right?

21 A. Yes.

22 Q. And when you say sent out a ton of
23 supporting information, you're referring to
24 the marketing collateral and material that
25 you had extolling the merits of HAN's

1 L. Grippo

2 product; right?

3 A. Correct.

4 Q. Would you agree with me that this
5 is a situation where ContextMedia just won
6 over HAN due to fair competition?

7 MR. COWAN: Objection. Calls for
8 speculation. Go ahead.

9 A. It would appear so.

10 Q. Let me show you what was previously
11 marked as --

12 A. Do they have it in Spanish, though?
13 I still don't know.

14 Q. You should have gotten Ms. Devlin
15 on it. She would have found out. I've
16 handed to you and your counsel what has been
17 marked as Defendant's Exhibit 52. This is
18 another email chain that begins with someone
19 forwarding a comment about a practice
20 deciding to go with ContextMedia over HAN.
21 Is that how you read it?

22 A. It looks like they weren't able to
23 get in contact with the practice. What was
24 happening is we would not hear from a
25 practice for a period of time, and then we

1 L. Grippo
2 would receive the equipment back. So anytime
3 that someone on Amy's team sort of wasn't
4 able to connect with the practice, they were
5 concerned that, you know, a competitor, most
6 likely RHN, was in there.

7 Q. But in the first --

8 A. But I don't think that they had
9 decided, unless I'm missing something.

10 Q. All right. Fair enough. I stand
11 corrected. It looks like they've told you
12 that they're inclined to go with
13 ContextMedia; right?

14 A. I don't think it said that. Am I
15 missing it? They asked me to follow up
16 because the practice had gone to radio silent
17 and that was, we had realized, a telltale
18 sign that something was wrong and that
19 perhaps they were talking to a competitor.

20 Q. Right. If you look at the first
21 comment, though, doesn't it say, "Doctor went
22 to some conference and saw program he thought
23 would be better"; right?

24 A. I'm sorry. I did not see that.
25 Yes.

1 L. Grippo

2 Q. Do you see it now?

3 A. I do.

4 Q. And you understand that now to mean
5 that the doctor -- and here's another doctor
6 that went to a conference and saw
7 ContextMedia and now preferred it; right?

8 A. It looks like Laurie was making an
9 assumption that they were switching to RHN,
10 but I don't know -- I don't see that they --
11 they just said a competitor, so it could have
12 been RHN, it could have been Health Monitor.
13 I'm not sure which one it was.

14 Q. All right. Fair enough. Do you
15 recall that it was reported to you that a
16 number of physicians who had gone to a
17 conference and seen ContextMedia's content
18 came back from the conference and decided to
19 switch to ContextMedia?

20 A. I do.

21 Q. And HAN reacted to that by deciding
22 that it was going to start participating in
23 these conferences; right?

24 A. Correct.

25 Q. And it really upped its

1 L. Grippo

2 participation in the conferences in reaction
3 to this; right?

4 A. Correct. RHN as well as Health
5 Monitor. They actually formed a relationship
6 with one rheumatology association and...

7 Q. And then on the first page it looks
8 like you're being enlisted to try to keep the
9 practice; right?

10 A. Yes.

11 Q. And you say, "I'm happy to call.
12 What is the desired outcome?" Right?

13 A. Correct.

14 Q. And you say, "I just read through
15 all the notes." And that's CMS notes; right?

16 A. Correct.

17 Q. "And it looks like they've had one
18 service issue after another." Do you see
19 that?

20 A. Yes.

21 Q. And so you were skeptical that you
22 were going to be able to save them because of
23 the service issue problems; right?

24 A. Correct.

25 Q. And that was a recurring problem at

1 L. Grippo

2 HAN as well, was it not, practices being
3 dissatisfied with service, in particular
4 connectivity issues?

5 A. A recurring?

6 Q. Yes.

7 A. Well, it was certainly an issue of
8 some practice, particularly older equipment,
9 which it looks like this was, which is why
10 Kelly was saying that I could upgrade them.
11 So we had been selling the program for a
12 number of years, so there was a lot of
13 different equipment out there. So some of
14 the older equipment had service issues.

15 Q. Well, isn't it a fact that you know
16 that you lost practices to ContextMedia due
17 to service and connectivity issues?

18 A. Yes.

19 Q. And it also became a competitive
20 issue for HAN that it was continuing to be
21 fax-based delivery versus internet-based
22 delivery; right?

23 A. Analog versus internet, yes.

24 Q. And HAN has reacted by gradually
25 migrating its practices to internet-based

1 L. Grippo

2 delivery; right?

3 A. Yes.

4 Q. It hasn't finished yet, but that's
5 the goal; right? It hadn't finished by the
6 time you left, but that's the goal?

7 A. Yes.

8 Q. And ContextMedia was internet-based
9 delivery all along; right?

10 A. I'm not sure. We actually shied
11 away from internet delivery for a number of
12 years because practices were concerned that
13 we would be tapping into their internet, and
14 they wanted to make sure there were the right
15 firewalls and all of that, but it ended up
16 being a much more cost effective solution.

17 Q. And once people got used to the
18 internet, thanks to Al Gore, practices didn't
19 have those concerns any longer; right?

20 A. I don't know who Alcor is.

21 MR. O'BRIEN: You didn't prepare
22 her properly.

23 MR. COWAN: Al Gore, G-o-r-e.

24 A. Oh, Al Gore. I do know who Al Gore
25 is. Yes. Thanks to him we have the

1 L. Grippo

2 internet. I thought you said Alcor. I
3 thought that was a company.

4 Q. Again, that's my southern Illinois
5 accent. Let me hand you and your counsel
6 what has been marked as Deposition Exhibit
7 Number 59. This one found its way up to you
8 as well; right? It actually starts at the
9 back page of what you're holding.

10 A. Yes.

11 Q. Do I at least have this one correct
12 that it appears to be a situation of head to
13 head competition?

14 A. I guess so, yes.

15 Q. And the reason I say that it says,
16 the notes say that the practice "declined our
17 program." Do you see that?

18 A. Yes.

19 Q. That suggests that --

20 A. Instead of canceled.

21 Q. Exactly.

22 A. Correct.

23 Q. Does the CMS database capture
24 practices that are the subject of a head to
25 head competition with HAN whether HAN wins or

1 L. Grippo

2 loses?

3 A. Practices are marked either --
4 there's always a reason for either
5 cancellation or being declined. I think the
6 designation is declined. And then the
7 reasons would be competition. The
8 interesting thing is I think they classified
9 television potentially at times as under
10 that. So it was a little -- there was a lot
11 in that. But I believe for a variety of
12 reasons there were -- they had to give
13 details as to why they were canceling or
14 declining us, yes.

15 Q. Actually, I've seen documents that
16 suggest cable TV was one of your biggest
17 competitors.

18 A. Practices going to television,
19 yeah.

20 Q. Maybe sad but true, but some people
21 prefer soap operas to educational --

22 A. It is very sad.

23 Q. Anyway, that's a different
24 conversation.

25 A. And Judge Judy.

1 L. Grippo

2 Q. It indicates here that HAN lost out
3 to ContextMedia because the practice wanted a
4 system that had sound. Do you see that?

5 A. Yes.

6 Q. Because their patients could listen
7 to the program. And it also says another
8 reason the practice went with ContextMedia
9 over HAN was the loop was longer; right?

10 A. Correct.

11 Q. And did you also hear that one of
12 the reasons that certain practices preferred
13 sound was that they had a lot of elderly
14 patients who had trouble reading the messages
15 on the HAN content?

16 A. I personally did not hear that
17 feedback, to which I would say how loud do
18 you need to have it and wouldn't that be
19 incredibly distracting. But that's what I
20 would say to a practice, but I don't recall
21 ever having that conversation with a
22 practice.

23 Q. And after you lose in this head to
24 head competition to ContextMedia, you write
25 Ms. Finley at the very top of the first page

1 L. Grippo

2 and say, "Sorry to be spreading bad news on a
3 yucky Monday morning, thought I would share
4 the feedback. This is a six-doc practice
5 that we desperately needed to win!" Looks
6 like that's probably a frown that didn't get
7 translated. "So frustrating."

8 A. "So frustrating." Yes.

9 Q. And a six-doc practice is a
10 particularly valuable practice; right?

11 A. Absolutely.

12 Q. Because at least at HAN, you don't
13 count your offices by practice but by docs;
14 right?

15 A. We sell doctors, yes. We don't.
16 The other side of the business does.

17 Q. Right. You get paid --

18 A. So we needed to keep a certain
19 number of doctors within our network.

20 Q. The business depends upon revenue;
21 right?

22 A. Correct.

23 Q. And that revenue comes from the
24 advertisers; right?

25 A. Correct.

1 L. Grippo

2 Q. And they pay based upon the number
3 of doctors; right?

4 A. Correct.

5 Q. And you say "This was a six-doc
6 practice that we desperately needed to win."
7 Do you know why you wrote that in December of
8 2011?

9 A. Because we were losing a
10 significant number of doctors, and we needed
11 at the end -- the way that the business runs
12 is if you need to have an average of 100
13 doctors over the course of the year, if you
14 get all those doctors in January and you
15 maintain them for the year, beautiful. If
16 you -- so it's average docs per month. So
17 think about if you don't recruit those
18 doctors until July, what happens, it goes up
19 exponentially. So in December --

20 Q. Gotcha.

21 A. -- it's really critical that we
22 make up those doctors so that we can average
23 out the docs per month for our contract with
24 our sponsors. And that was another issue,
25 too, with regards to the sponsors, because,

1 L. Grippo
2 you know, there were competing sponsors, and
3 they were taking money away, you know,
4 funding both programs and taking doctors away
5 from us, but. Again, I'm going on.

6 Q. Let me show you what we've marked
7 as Defendant's Deposition Exhibit 67. This
8 appears to be another set of comments from
9 the CMS database that get forward up to you;
10 right?

11 A. Yes.

12 Q. And the comments say that the
13 practice has actually been turning HAN off;
14 right?

15 A. Yes.

16 Q. And that's because patients are
17 telling the practice that HAN's content is
18 boring, repetitive; right?

19 A. Yes.

20 Q. It's also noted that, "Looking at
21 past comments, we haven't reached out since
22 November except for sending cookies"; right?

23 A. Yes.

24 Q. And she notes, "I think we are in
25 jeopardy of losing them"; right?

1 L. Grippo

2 A. Yes.

3 Q. She's writing this apparently in
4 February of 2013. In the normal course of
5 things, would you reach out to a practice
6 just as a matter of maintenance of the
7 relationship more frequently than every two
8 months?

9 A. There would certainly -- I'm sorry.
10 Can you ask repeat the question.

11 Q. Let me ask a different question.
12 You told me earlier today that part of the
13 job of your folks was not simply to reach out
14 to practices you were trying to sell, but
15 practices that you had already sold, to make
16 sure that the relationship was good; right?

17 A. Yes. That was a goal, but you
18 still -- they still had to make their quotas.
19 So it was more important for them to -- they
20 needed to get to the practices and enroll new
21 practices, and when they were in the area and
22 could stop by existing practices, they would,
23 but that primarily fell on Amy's team in
24 terms of customer retention. I don't
25 necessarily agree with it, but that's the way

1 L. Grippo
2 that the compensation was set up. They
3 weren't compensated to stop by to just
4 nurture the relationship. And in many cases
5 they may or may not have enrolled that
6 practice, so.

7 Q. So when you say you didn't
8 necessarily agree with that, do I understand
9 you to be saying that the compensation system
10 was structured in such a way that there were
11 no real financial incentives for salespeople
12 to stop by for the maintenance visits, if you
13 will?

14 A. I think a good salesperson would do
15 that regardless, because ultimately if you're
16 maintaining that, it's less doctors that
17 you're going to have to replace because we're
18 not going to lose them. What I had tried,
19 you know, we had talked about, not just me,
20 but we had talked about, well, you know,
21 could there be something where, you know, a
22 rep would be compensated somehow for stopping
23 in and having a conversation with regard to
24 the program, making sure that everything was
25 working correctly, because we were the feet

1 L. Grippo
2 on the street. It's very hard to do things
3 remotely. But we did manage it remotely,
4 and, you know, for the most part we had very
5 good, very high customer ratings. So it
6 really wasn't something that was deemed
7 necessary at the time.

8 Q. What I was really trying to get at
9 was if you guys had some sort of schedule,
10 whether it was rigidly filed or just an
11 aspirational target, as to the frequency with
12 which you would be in touch with a practice
13 to see how things were going.

14 A. Once we enrolled them, once it went
15 on the wall, it was Amy's team --

16 Q. Gotcha.

17 A. -- to maintain the contact with
18 them. I would advocate for my reps if
19 they're in the area to stop by, because I
20 think it's just good business practice, but
21 they weren't compensated to do that.

22 Q. And then Amy reaches out to you and
23 says, "Can we get someone from your team to
24 visit this office to try to save them." Do
25 you see that?

1 L. Grippo

2 A. Yes.

3 Q. Do you know whether you were able
4 to save this practice?

5 A. I don't. I believe I sent Sonya
6 there, but I don't -- I'm not sure.

7 Q. This needs to be marked. No. It
8 has been marked. Excuse me. It's 68. This
9 appears to be another email string with
10 respect to a practice who is moving from HAN
11 to ContextMedia that ends up at your doorstep
12 as well; right?

13 A. Yes. Jonathan. I remember
14 Jonathan. There were a lot of people who
15 were asked to go there, but I ended up going
16 there myself.

17 Q. Johns Hopkins?

18 A. Yes.

19 Q. It's not a great neighborhood.

20 A. No. It really isn't. And I am
21 honestly not certain when I went there --
22 this is in March. Oh, I'm sorry. Go ahead.
23 Ask the question.

24 Q. Look at Page 9 when you're ready.
25 But spend whatever time you want with the

1 L. Grippo

2 document.

3 A. Okay.

4 Q. It sounds like you have some memory
5 of this situation.

6 A. Yes.

7 Q. And isn't it true this is a
8 situation where Johns Hopkins already had
9 ContextMedia installed in some of its offices
10 and had HAN installed in other offices;
11 right?

12 A. I believe so, yes.

13 Q. In fact, if you look at the email,
14 he's telling you that, he's saying he's
15 comparing the ContextMedia and the HAN
16 content.

17 A. It says that he signed the waiver
18 provided by them to remove our -- gives them
19 permission to remove our equipment. Yes.

20 Q. So he's got a couple of screens
21 showing ContextMedia content; right?

22 A. I guess so.

23 Q. He's got a couple of screens
24 showing HAN content; right?

25 A. Correct.

1 L. Grippo

2 Q. And he's telling you what his
3 judgments are as to the relative merits of
4 each; right?

5 A. It would appear so.

6 Q. He's not being lied to by
7 ContextMedia; right? He's actually looking
8 at the actual product; right?

9 MR. COWAN: Object to the form.

10 A. I would guess that he's watched
11 them. I mean I know very few -- and Jonathan
12 wasn't the final decision maker on this.

13 Q. No, but he says that the other
14 rheumatology offices are using RHN and like
15 it because there is much more information,
16 not repetitive, with interviews, news wires,
17 and streaming weather; right?

18 A. Yes.

19 Q. And the HAN person says that she
20 explained that we have streaming weather, and
21 he said no, you really don't; right?

22 A. Correct.

23 Q. "He described our system as
24 repetitive and a very basic slide show";
25 right?

1 L. Grippo

2 A. Correct.

3 Q. Would you agree with me that this
4 is a situation where HAN lost out to
5 ContextMedia due to fair competition?

6 MR. COWAN: Objection. Go ahead.

7 A. Yes.

8 Q. I mean there's no better way to
9 evaluate the relative products than actually
10 examining both of them; right?

11 A. Correct.

12 Q. Let me show you what was previously
13 marked as Defendant's Exhibit 34. Now, here
14 we have Amanda Devlin again reporting to you
15 and Ms. Finley and Ms. Brewer some additional
16 information she's received from Mr. Zmick at
17 ContextMedia; right?

18 A. Yes.

19 Q. And now she has gotten Mr. Zmick to
20 send some examples of ContextMedia's content;
21 right?

22 A. Yes.

23 Q. Or some links to physical activity,
24 recipe example, and personal story example.
25 Do you see that?

1 L. Grippo

2 A. Yes.

3 Q. And on the back page he writes, "We
4 will then coordinate the installation with
5 you upon the removal of Accent Health";
6 right?

7 A. Yes.

8 Q. At this point in time Ms. Devlin is
9 telling Mr. Zmick at ContextMedia that she's
10 from Dr. Corbett's office and they have
11 Accent Health; right?

12 A. Apparently.

13 Q. And he's not saying we'll take the
14 equipment down, he's saying that the practice
15 has to have Accent Health do it; right?

16 A. Yes.

17 Q. Do you know for how long a period
18 of time Ms. Devlin kept up this charade with
19 Mr. Zmick in order to gain information about
20 ContextMedia?

21 A. I do not know exactly. I believe
22 it was just a couple of email exchanges and
23 then that was -- she had indicated that she
24 was not interested or something along those
25 lines.

1 L. Grippo

2 Q. Did personnel at HAN besides
3 Ms. Devlin misrepresent themselves to Context
4 in order to find out information about
5 Context, to your knowledge?

6 A. No.

7 Q. Did HAN do that with other
8 competitors besides ContextMedia, to your
9 knowledge?

10 A. No.

11 Q. Let me show you what was previously
12 marked as Exhibit 35. This is more
13 information from Ms. Devlin to you and
14 Ms. Brewer that Ms. Devlin has been able to
15 get from Mr. Zmick; is that right?

16 A. Yes.

17 Q. And now what Ms. Devlin is telling
18 Mr. Zmick, if you look at Page 2, is the
19 doctor preferred a silent program; right?

20 A. Yes.

21 Q. And Mr. Zmick then makes the
22 assumption that what Ms. Devlin is talking
23 about is HAN's product; right?

24 A. Yes.

25 Q. Because you were the only

1 L. Grippo
2 competitor out there that had a silent
3 program; right?

4 A. Correct.

5 Q. So that was a fair assumption on
6 his part; right?

7 A. Correct.

8 Q. And he says "We also have a silent
9 loop program. It is longer and much more
10 thorough than the Healthy Advice that you are
11 interested in"; right?

12 A. That's what he says.

13 Q. And then she gets him now to send
14 ContextMedia's silent content; right?

15 MR. COWAN: Objection.

16 A. Yes. He asked if she would like to
17 see it. She said she could show it to him,
18 but he's already made his decision. And then
19 he sends those two examples here.

20 Q. Of a silent loop?

21 A. Of a silent loop.

22 Q. This was previously marked as
23 Defendant's Exhibit 47. Now, you're not on
24 this email, but do you know as of
25 February 28th, 2011, what position Mike

1 L. Grippo

2 McAllister was in?

3 A. I believe he was the chief
4 operating officer.

5 Q. And he's asking Ms. Finley why
6 practices are saying they like ContextMedia
7 content over HAN's; right?

8 A. Yes.

9 Q. And Ms. Finley is the person to ask
10 that question; right?

11 A. Her and her team would get the
12 feedback, yes.

13 Q. And she says, "We're hearing sound,
14 cooking segments, and recipes. Some have
15 just said the doctors like the overall
16 content better than ours"; right?

17 A. Yes.

18 Q. She doesn't say anything about
19 unethical conduct or misleading practices,
20 does she?

21 A. She does not.

22 Q. Let me hand you what was previously
23 marked as Defendant's Deposition Exhibit 74.
24 Now, this is a relatively long email chain.
25 It starts from what appears to be a comment

1 L. Grippo
2 from the CMS database where a practice is
3 saying they're switching to ContextMedia
4 because ContextMedia offered them a gift
5 card.

6 A. Okay.

7 Q. And that the practice would
8 consider HAN if HAN would offer the same
9 deal. Do you see that?

10 A. Where are you? Oh, here.
11 ContextMedia offered an American Express
12 card. They said if we would offer, they
13 would feel free to stay. Okay.

14 Q. And then there's a discussion in
15 the email chain about bringing this to the
16 attention of J3. Do you know who J3 is?

17 A. I don't.

18 Q. Were you involved in efforts at HAN
19 to try to cast ContextMedia in a negative
20 light with the advertising sponsor side of
21 the business?

22 A. I was not. I did always advocate
23 for exclusivity with the sponsors,
24 particularly in a program as small as
25 rheumatology, because if the same sponsor was

1 L. Grippo
2 sponsoring both programs, they were
3 essentially funding the removal of our
4 doctors.

5 Q. Then if I could direct your
6 attention, since you weren't involved in the
7 J3 activity, to Page 4. It looks like here's
8 where you come into the loop when Jill Brewer
9 writes to Mr. McAllister and Mr. Campbell, a
10 bunch of other folks, and you; right?

11 A. Yes.

12 Q. And the folks on this email
13 comprise all of HAN's senior management plus;
14 right?

15 A. Correct.

16 Q. So Mr. --

17 A. Senior and mid-level, yes.

18 Q. So Ms. Brewer was senior
19 management; right?

20 A. Correct.

21 Q. And so was Mr. McAllister and
22 Mr. Campbell; right?

23 A. Yes.

24 Q. Ms. Schnell was as well; right?

25 A. Yes. And as well as Sabrina and

1 L. Grippo

2 Scott.

3 Q. How about Ms. Ruschau?

4 A. Based on her title, I would think
5 that she was, but I'm not sure if she was
6 part of senior management at that point.

7 Q. But this is all of senior
8 management and some of middle management;
9 right?

10 A. Correct.

11 Q. And she writes, "At some point we
12 need to get together to discuss a plan to
13 sustain this universe into 2012 as it doesn't
14 look like these guys are going away." Do you
15 see that?

16 A. Yes.

17 Q. And then she also writes that
18 "Attached are two emails" -- and I don't have
19 those -- "one where it shows that RHN is
20 buying, yes, buying ads on Google and we all
21 know this ain't cheap"; right?

22 A. Yes.

23 Q. See that?

24 A. Yes.

25 Q. And that's fair competition, isn't

1 L. Grippo

2 it, buying an ad on Google?

3 A. Yes.

4 Q. "And they developed a silent
5 version of their network to compete directly
6 with us." That's fair competition; right?

7 A. Yes.

8 Q. And then she says in parens, "Keep
9 in mind that Bernie is the alias that Amanda
10 Devlin used to dialogue with RHN to get the
11 information attached." Do you see that?

12 A. Yes.

13 Q. That's not fair competition, is it?

14 A. She definitely misrepresented
15 herself. We obviously couldn't call to find
16 out about their programming, but -- so is
17 that fair? I would say no. I don't know
18 that we would have -- would not have been
19 able to get this information off of their web
20 site, but Amanda misrepresenting herself was
21 not being forthcoming.

22 Q. Right. And when you believe
23 ContextMedia behaves unethically in the
24 marketplace, you think that's unfair
25 competition; right?

1 L. Grippo

2 A. We were not disparaging
3 ContextMedia to customers. We were calling
4 them trying to understand their program so
5 that we understood what we were up against
6 and, you know, why we were hearing all of
7 this negative stuff from our -- from
8 customers that have been with us for so many
9 years. So is it unethical, yes, in looking
10 at it in hindsight, okay. But, again, she
11 wasn't disparaging the company. She was
12 sharing information internally with us so
13 that we knew what the competition was and
14 what they were doing and what they were
15 saying about us.

16 Q. No, I understand the distinction
17 you're drawing. I guess where I was headed
18 with this was if ContextMedia behaves
19 unethically, you think it's unfair
20 competition. And I was wondering if what's
21 good for the goose is good for the gander and
22 you also believe that when you behave
23 unethically, that's unfair competition.

24 MR. COWAN: Object to the form.

25 There's a lot in there, but go ahead.

1 L. Grippo

2 A. No.

3 Q. I'll withdraw the question.

4 A. That's okay.

5 Q. I'll withdraw it.

6 A. That's fine. Well, I don't mind
7 answering it.

8 Q. Okay.

9 A. As I think I said earlier, I'm
10 quite certain, and I don't know for sure
11 whether it was ContextMedia or Accent Health
12 or whoever, but over the course of my nine
13 years, I'm quite certain that competitors
14 called in claiming to be a doctor's office
15 wanting information regarding our programming
16 and how they went about enrolling, whether
17 they ended up starting a competitor or they
18 were from a competitor, I'm quite certain
19 that type of activity goes on. I'm not going
20 to disagree with you that it could be
21 perceived as unethical. But, again, this
22 wasn't client, customer facing. This was
23 internal. This was our own due diligence, if
24 you will, with regards to who the competitors
25 were, because we never really had competitors

1 L. Grippo

2 in the space.

3 Q. Yeah, it wasn't like telling a
4 practice when they had a contract with a
5 competitor that it wasn't really binding. It
6 wasn't that kind of thing; right?

7 MR. COWAN: Objection.

8 A. No, it is not.

9 Q. Okay. And above that Ms. Ruschau
10 writes to the group, and you're still there,
11 and she says, "Thanks for sharing the
12 information, Jill. And great detective work,
13 Amanda!" Do you see that?

14 A. Yes.

15 Q. That's hardly a reprimand for
16 unethical conduct, is it?

17 A. No.

18 Q. And then she says, "Speaking of
19 ContextMedia, they're obviously being VERY,"
20 in all caps, "aggressive and smart." Do you
21 see that?

22 A. Yes.

23 Q. Being smart is not unfair
24 competition, is it?

25 A. No.

1 L. Grippo

2 Q. And then she concludes by saying,

3 "It is obvious that we have to put a larger
4 emphasis on retention and truly partnering
5 with our practices if we are going to win or
6 compete." Do you see that?

7 A. Yes.

8 Q. And she's suggesting there that
9 perhaps HAN wasn't doing as good a job as it
10 should have been on retention and truly
11 partnering with our practices; correct?

12 A. "It is obvious we have to put a
13 larger emphasis on retention and truly
14 partnering with our practices if we are going
15 to win or compete," yes.

16 Q. She's suggesting that HAN needs
17 some improvement in that area; right?

18 A. More emphasis. Could be
19 improvement, but she just says more emphasis.

20 Q. In the second to last email in this
21 chain which begins on Page 1 is from Jill
22 Brewer to the group. She starts by
23 commenting on the ContextMedia silent content
24 after she's looked at the loops; right? Is
25 that correct?

1 L. Grippo

2 A. I'm sorry. What did you ask me?

3 Q. Doesn't Ms. Brewer start off by
4 commenting on the ContextMedia silent content
5 there at the bottom of Page 1?

6 MR. COWAN: Page 4? What did you
7 say?

8 MR. O'BRIEN: No. Page 1.

9 MR. COWAN: Page 1.

10 A. It says -- it looks like she's
11 answering a question. I just don't know what
12 the question is. I won't read out loud. The
13 one before that just says, "Lips still
14 moving. Amazing." I don't understand what
15 she's answering. But yes, she's commenting
16 on their -- what she -- the segments that she
17 viewed and her thoughts on those.

18 Q. The segment that she viewed of
19 ContextMedia's silent content; right?

20 A. Yes.

21 Q. And she says that "Some segments
22 have video with closed caption and some are
23 flash animation or Power Point slides." Do
24 you see that?

25 A. Yes.

1 L. Grippo

2 Q. She goes on to say, "which is how
3 they describe our programming prospects";
4 right?

5 A. Yes.

6 Q. And in the third paragraph on
7 Page 2 she writes, "With regard to churn,
8 what we've heard is that many offices are
9 just trying something new or that there is a
10 new manager, so they don't know us or the
11 product well." Do you see that?

12 A. Yes.

13 Q. And at this time Ms. Finley reports
14 to Ms. Brewer; right?

15 A. Yes.

16 Q. So you would expect Ms. Brewer to
17 also be knowledgeable about why practices
18 were switching from HAN to ContextMedia;
19 right?

20 MR. COWAN: Objection. Go ahead.

21 A. I don't know when this is. I mean
22 we certainly learned as we heard about them.
23 But yes, Amy would report to Jill what we
24 were hearing with regard to competitor
25 information.

1 L. Grippo

2 Q. Right. Let's look at what we've
3 previously marked as Defendant's Exhibit 82.
4 Is this one of the emails you saw the other
5 day with your lawyer?

6 MR. COWAN: Today.

7 A. Today.

8 Q. Today.

9 A. Yes.

10 Q. And at the end of this chain you
11 write, "Let's see what she says." "She" is
12 Jill Brewer; right?

13 A. Yes.

14 Q. "I think we are opposed in
15 principle but we may need to do this
16 occasionally. I think Jill would be in
17 favor, but Kimberly is opposed." Do you see
18 that?

19 A. Yes.

20 Q. And this is a reference to taking
21 down ContextMedia's equipment; right?

22 A. Correct.

23 Q. And do you know if Ms. Brewer ever
24 approved of that?

25 A. She did not.

1 L. Grippo

2 Q. You presented it to her and she
3 declined to approve that?

4 A. Correct.

5 MR. O'BRIEN: We'll break.

6 VIDEOGRAPHER: The time is
7 3:53 p.m. on March 26, 2014. This is
8 the end of tape number two.

9 (Recess taken from 3:53 p.m. to
10 4:11 p.m.)

11 VIDEOGRAPHER: The time is
12 4:11 p.m. on March 26, 2014. This is
13 tape number three. Back on the record.

14 Q. Let me show you and your counsel
15 what has previously been marked as
16 Defendant's Exhibit 83.

17 A. Yes.

18 Q. This appears to be another email
19 chain where you're proposing the possibility
20 of taking down ContextMedia's equipment;
21 right?

22 A. I think this is the same practice.

23 Q. You think it's the same practice?

24 A. (Indicating).

25 Q. Okay. So --

1 L. Grippo

2 A. I only recall proposing it one
3 time, against my better judgment, and we
4 never did.

5 Q. And so when you say on Page 2 "I am
6 sure Jill will approve of taking down the RHN
7 equipment," I take it it turns out you were
8 wrong?

9 A. Correct. All fired up at the time,
10 apparently.

11 Q. Did I miss something? Let me show
12 you what was previously marked as Defendant's
13 Exhibit 84. This is an email exchange
14 involving a practice switching out from HAN
15 to ContextMedia; right?

16 A. Yes.

17 Q. Was there any rhyme or reason as to
18 when comments from the CMS database regarding
19 a practice leaving HAN would find its way to
20 your side of the business? Was it done all
21 the time, just when it was in your region,
22 just when they thought you could contribute
23 something to the save effort?

24 A. Typically, if they believed that we
25 could do something to help save, but also

1 L. Grippo

2 just to share something that may have been
3 learned that we learned that they did at a
4 practice.

5 Q. So somewhat ad hoc?

6 A. If I was going to be involved in
7 the save, that would always come to me. I
8 would occasionally see -- be forwarded
9 comments from Amy's team regarding what we
10 had learned that had happened at a particular
11 practice. So I can't say that I saw every
12 email with regards to RHN.

13 Q. Well, if you had, we would have
14 been here a lot longer.

15 A. I'm sure.

16 Q. You mentioned earlier today that
17 the company maintains save statistics. In
18 what format did you see those? Was it a
19 report devoted to saves? Was it a column in
20 the CMS database?

21 A. Statistics on churn, so on
22 practices that we had lost, but particularly
23 with regard to saves, I don't know that I
24 ever saw -- Amy would compute that. I
25 honestly -- I'm not sure if she would keep it

1 L. Grippo

2 in Excel or -- I'm sure she created some sort
3 of Excel document or something.

4 Q. You saw churn reports from time to
5 time; right?

6 A. Yes.

7 Q. And do you recall that those churn
8 reports had information in them about saves
9 as well?

10 A. I don't recall. They would be
11 linked, because if we were saving it, the
12 churn would be less. But I really don't
13 recall what those reports look like.

14 Q. Do you recall statistics on
15 percentages of saves once a practice had
16 notified HAN that it wanted to leave?

17 A. Yes.

18 Q. And where did you see those?

19 A. In Amy's churn report.

20 Q. And were those reflected as a
21 percentage of save -- are you a baseball fan?

22 A. Yes.

23 Q. Were they recorded as a percentage
24 of save opportunities?

25 A. Percent of save -- I don't recall

1 L. Grippo

2 ever seeing that number, no.

3 Q. How did you see the statistics
4 presented, then? Just gross number of saves?

5 A. Well, I would see historical churn
6 rate by program year over year. And I never
7 actually saw it until this became an issue
8 with rheumatology. But it was a number that
9 we always tracked, because we needed to know
10 our historical churn rate so that we could
11 factor that into the numbers we needed to
12 acquire in the following year in order to
13 maintain that average doc per month. Does
14 that make sense?

15 Q. Yeah. But my question was when you
16 saw the save numbers, were they presented as
17 a gross number, eight number of saves, or are
18 they presented as eight number of saves
19 reflecting the percentage of five percent of
20 save opportunities?

21 A. I never saw a percentage of save
22 opportunities number. I would simply see the
23 percent churn.

24 Q. Okay.

25 MR. COWAN: That's what -- because

1 L. Grippo
2 it was unclear to me if you had really
3 established that there were save
4 numbers. I just want to make sure I
5 understand that.

6 MR. O'BRIEN: Well, you'll get a
7 chance to ask her questions. I mean I
8 think she said a couple times today
9 that --

10 MR. COWAN: Yeah, it was a little
11 -- it was gray, but go ahead. You're
12 right. I've got my own time.

13 Q. Were the save numbers you saw
14 specific as with the churn numbers you saw to
15 programs?

16 A. The reports that came out regularly
17 were churn reports, but we were discussing --
18 we were trying to save practices. So I'm
19 quite certain that I saw something at a point
20 in time that, you know, had number of
21 practices, number saved, number lost.
22 Whether that was in the same -- I don't
23 believe it was the same report. I think it
24 was something that we started creating, and I
25 think it was Excel.

1 L. Grippo

2 Q. And was it by program?

3 A. Yes.

4 Q. So there would be some numbers for
5 PCN, there would be some numbers for ACN?

6 A. Correct.

7 Q. What's your educational background?

8 A. I have an undergraduate degree in
9 psychology and a master's in human resource
10 management.

11 Q. And from which institutions and
12 what years?

13 A. I graduated in '91 from SUNY
14 Oneonta, and I graduated in I think '96 from
15 Mercy College.

16 Q. I gave you 84; right?

17 A. Yes.

18 Q. Now, the beginning of this involves
19 a practice notifying HAN that it's switching
20 to ContextMedia. You stated "They offered
21 him such a great incentive that he has to go
22 with them, probed, but he would not reveal
23 the incentive. Began to schedule the removal
24 and he said, oh, no, RHN will take the
25 equipment down and ship it to you. I

1 L. Grippo
2 explained that if anything happened to the
3 equipment, his office would be responsible."
4 Do you see that?

5 A. Yes.

6 Q. And then he says in response to
7 that, "He said that we took the equipment
8 down," we being HAN, "when we," being HAN,
9 "enrolled them, and he just thought it was an
10 industry standard." Did you see that?

11 A. Who is speaking on behalf of HAN?

12 Q. Well --

13 A. This is Michael Chung had decided
14 to go with RHN because of an incentive that
15 they offered him. We couldn't find out what
16 that was. He said he began to schedule --
17 no. Who is it. Liz began to schedule the
18 removal, and he said, "No, don't worry about
19 scheduling it, RHN will take down the
20 equipment and ship it to you." And then Liz
21 explains that if anything happened to the
22 equipment, that his office would be
23 responsible. And he said, and I'm guessing
24 this is Michael Chung, that we, the practice,
25 took the equipment down when we enrolled

1 L. Grippo
2 them, and he just thought it was industry
3 standard.

4 Q. So when Liz Billman writes "we,"
5 you think she's referring to the practice and
6 not HAN?

7 A. He said we took the equipment down,
8 meaning the practice.

9 Q. That part is not in quotes like the
10 other stuff, is it?

11 A. No. But he said we took the
12 equipment down when we enrolled them. So I'm
13 guessing that she meant when they enrolled
14 with RHN, because if they were enrolling with
15 us, why would we take equipment down. We
16 would be putting it up.

17 Q. Not if you were switching something
18 out, like a cable TV or a competitor's
19 equipment.

20 A. But we didn't do such things.

21 Q. That was my next question. As far
22 as you know, HAN never took down the
23 equipment of some other party?

24 A. No, as far as I know. And now
25 you're going to get me on my bad sense of

1 L. Grippo

2 humor.

3 Q. I'm sorry.

4 A. And now you're going to get me on
5 my bad sense of humor.

6 Q. I don't know what to say to that.
7 Then you write, "Can we steal their sponsors
8 so they run out of money."

9 A. Yes.

10 Q. What did you mean by that?

11 A. As I had said earlier, one of the
12 issues that I had as a manager in the field
13 -- I'm sorry, my eyes are watering -- was the
14 fact from the client side that they would
15 sell to our sponsors. Maintaining -- you
16 know, it was really important to make sure
17 that our sponsors were only funding our
18 educational programs regardless of whether it
19 was primary care, cardiology, rheumatology,
20 because the reality is if we don't have
21 exclusivity, then they're essentially funding
22 our competitors to take our doctors away from
23 us, which is what we found out to be the case
24 with Humera. And that was a huge issue for
25 me. And so essentially they took our sponsor

1 L. Grippo

2 away so that we -- and we were in a lot of
3 trouble, so I was jokingly, obviously not
4 good taste, saying, well, let's steal their
5 sponsor so that they run out of money.

6 Q. That wasn't a real action item, you
7 were just being humorous?

8 A. Facetious, yes.

9 MR. COWAN: Dick didn't think that.

10 MR. O'BRIEN: I'm sorry?

11 MR. COWAN: You knew that.

12 MR. O'BRIEN: I get surprised every
13 day. You know, I forgot what the last
14 number was. It was somewhere between 80
15 and 85. So why don't we just guess and
16 mark this as 85.

17 (Defendant's Exhibit 85, Email
18 exchange, marked for identification, as
19 of this date.)

20 Q. I've handed to you what has now
21 been marked as Defendant's Exhibit 85. This
22 starts off with an exchange, which doesn't
23 look like you're involved again, where HAN is
24 trying to get J3's attention about things
25 that ContextMedia is doing. And then on

1 L. Grippo

2 Page 2 there's an email that you've already
3 seen from Jill Brewer about sustaining the
4 universe.

5 A. Yes.

6 Q. And then there's an email that you
7 add to the chain that appears on Page 1.

8 A. Yes.

9 Q. And you're writing to --

10 A. My team.

11 Q. That's your team. Okay. Thank
12 you. And then sort of as a PS at the bottom
13 you write, "Also, they are obviously sharing
14 information with Amanda, a/k/a Bernie, even
15 though she does not really represent any
16 doctors." And the "they" there is
17 ContextMedia; right?

18 A. Yes.

19 Q. And you say, "Be careful who you
20 send disclosed information to. They should
21 be verified."

22 A. Correct.

23 Q. So drawing on your experience of
24 Ms. Devlin being so successful at getting
25 information from ContextMedia, you're telling

1 L. Grippo
2 your team don't fall for a similar ruse;
3 right?

4 A. Correct.

5 MR. O'BRIEN: So this will be 86.

6 (Defendant's Exhibit 87, Email
7 exchange involving Ms. Grippo,
8 Mr. Ferrara, and Mr. Hartfield, marked
9 for identification, as of this date.)

10 MR. O'BRIEN: You know what, can we
11 remark that. It looks like our last
12 exhibit was 86. And I'll correct the
13 others at some other point in time, but
14 can we remark this one as 87.

15 MR. COWAN: Yeah, that's fine.

16 MR. O'BRIEN: At least we'll have
17 one less mistake.

18 Q. This is an email exchange involving
19 you and Mr. Ferrara and Mr. Hartfield; right?

20 A. Yes. Ms. Hartfield.

21 Q. And it doesn't tell us what site is
22 involved here. But this is an example where
23 a practice is switching to ContextMedia
24 because the practice felt its content was
25 more geared towards rheumatoid arthritis;

1 L. Grippo

2 right?

3 MR. COWAN: Objection. Go ahead.

4 A. So my comment is, "Looks like the
5 site switched to CM," ContextMedia. "They
6 felt it was geared more towards rheumatoid
7 arthritis rather than a more general
8 rheumatology program." Yes.

9 Q. And you're reporting that --
10 Ms. Hartfield is reporting that to you. I'm
11 sorry. I got that wrong, didn't I?

12 A. Yes.

13 Q. And she tells you that the patient
14 felt they would get more value from that;
15 right?

16 A. Yes. I was copied on this. None
17 of this was my words.

18 Q. Now let me show you what was
19 previously marked as 86. You're not shown on
20 this, but the only question I have for you is
21 you see -- did Ms. Hartfield report to you?

22 A. No. She reported to Kelly.

23 Q. I see. And Kelly reported to who?

24 A. Amy.

25 Q. And she writes here, "Hey, I

1 L. Grippo

2 REALLY," all caps, "need you to delete this
3 comment." Do you see that?

4 A. Yes.

5 Q. Were you aware of circumstances
6 where it was HAN's practice to require that
7 comments received from practices as to why
8 they switched were to be deleted?

9 A. No.

10 Q. Can you shed any light on why
11 Ms. Hartfield wrote this?

12 A. Let me read it. I can't imagine
13 why she would request that, and I can't
14 imagine that Kelly would honor it. But I'll
15 read it. Unless it was inaccurate, I don't
16 know. I don't know why she would make such a
17 request.

18 MR. O'BRIEN: I think the only
19 exhibit we're going to need to fix,
20 we've got two 85s now.

21 MR. COWAN: That's fine.

22 MR. O'BRIEN: But we can work that
23 out.

24 MR. COWAN: Sure.

25 MR. O'BRIEN: And I've got no

1 L. Grippo

2 further questions. Thank you for your
3 time.

4 THE WITNESS: Okay.

5 MR. COWAN: I have a --

6 THE WITNESS: Well, I have just a
7 couple things. The other thing I will
8 say to this is with regards to honesty,
9 that was sort of a sticking point with
10 Jill. And I can't imagine that she
11 would have reacted favorably to this
12 request. So I don't know why this was
13 done.

14 And I just wanted to say, in case
15 it wasn't clear, and I know a lot of
16 what I know about the situation was not
17 directly reported to me. It was
18 reported to my peers. It was reported
19 to me by my reps and not directly to me.
20 The only reason I came here today, and
21 not that I'm here to advocate for
22 PatientPoint, and we certainly over the
23 years had more than our fair share of
24 competitors, primarily Accent Health. I
25 don't think that we would have been --

1 L. Grippo

2 we would be here today if there weren't
3 tactics employed early on by
4 ContextMedia, whether they are smart or
5 aggressive, that were, you know,
6 obviously they were deemed unethical.
7 And I've never -- and maybe it is, maybe
8 other companies act this way, but the
9 only reason I wanted to come in here
10 today is because it was very frustrating
11 for us when we're trying to operate in a
12 certain way, and Health Monitor, too.
13 And at conferences I would talk to the
14 people from Health Monitor. They're
15 like we can't believe some of the things
16 that they're doing and that we're
17 hearing from practices. So that's the
18 only reason that I'm here today.

19 And, you know, fair competition, is
20 their program superior in some regards,
21 maybe. Is it more engaging, perhaps.
22 You know, if a practice fairly evaluated
23 both of them and chose to go with
24 theirs, then yeah. Then if we didn't
25 clearly articulate the value of ours

1 L. Grippo

2 over theirs, then we deserve to lose
3 them. But I don't think it's fair that
4 our practices were continually barraged
5 with calls, that they were showing up
6 and taking down equipment. And whether
7 it happened once or whether it happened
8 a hundred times, it's just -- that was
9 really the reason that I wanted to come
10 today, because it was just very -- like
11 I can't believe these guys are getting
12 away with it. And I just said we should
13 be suing them. And apparently we are.
14 Or they did. They are. So I just
15 wanted that being stated for the record,
16 as I'm not going to be at any trial if
17 there is one, so.

18 MR. O'BRIEN: And I move to strike
19 all that as not being responsive to any
20 question.

21 THE WITNESS: Okay.

22 EXAMINATION BY

23 MR. COWAN:

24 Q. You do recall when Mr. O'Brien told
25 you that if you had anything to offer at any

1 L. Grippo

2 point during the course of the deposition, to
3 do that?

4 A. Yes.

5 MR. O'BRIEN: If it was in response
6 to a question.

7 MR. COWAN: Can we go off the
8 record.

9 VIDEOGRAPHER: The time is 4:33.
10 We're going off the record.

11 (Discussion off the record.)

12 VIDEOGRAPHER: The time is
13 4:34 p.m. We're back on the record.

14 Q. Ms. Grippo, Grant Cowan. Because
15 you're not going to be present for trial, I
16 would like to ask you just a few follow-up
17 questions following on some of what
18 Mr. O'Brien asked you.

19 At one point I think you said that
20 it's your understanding that a lot of what
21 Context did in terms of trying to penetrate
22 the practices was done remotely either by
23 phone or by email?

24 A. Correct.

25 Q. Were you privy to any of the calls

1 L. Grippo

2 that took place between Context and any of
3 the HAN practices that switched? Were you a
4 party to those calls?

5 A. No.

6 Q. Do you have any idea what was said
7 on any of these calls?

8 A. Only what was relayed to me, but
9 nothing specific. You know, I was never part
10 of any -- I never listened in on any of those
11 calls.

12 Q. And you have not seen any of the
13 ContextMedia emails or any emails that were
14 sent to HAN practices, have you, where they
15 were articulating whatever it was that they
16 were trying to articulate in terms of the
17 sale?

18 A. Just the one to Amanda. Just the
19 ones, I guess the emails to Amanda.

20 Q. So as you sit here today, you don't
21 know what specifically the HAN practices were
22 told by ContextMedia employees?

23 A. With absolute certainty?

24 Q. Right.

25 A. No.

1 L. Grippo

2 Q. And you don't know what things that
3 were told by Context to the practices the
4 practices relied upon in making their
5 decision to switch, do you?

6 A. No.

7 Q. For instance, if a practice was
8 told by ContextMedia that they had in the
9 last year switched out 350 HAN practices, you
10 don't know whether the practice was
11 influenced by that statement, do you?

12 A. No.

13 Q. You don't know if a practice was
14 told by ContextMedia that the HAN loop was
15 simply a Power Point loop, you don't know
16 whether or not the practice was influenced by
17 that statement, do you?

18 A. Whether or not the practice was
19 influenced or --

20 Q. Yes.

21 A. -- whether or not they said it?
22 Yes, I do not know whether or not they would
23 be influenced for certain.

24 Q. And you don't know if ContextMedia
25 told a practice that the HAN loop consisted

1 L. Grippo
2 of approximately 50 percent ads, you don't
3 know if the practice was influenced by that
4 statement, do you?

5 A. I would venture to say that they
6 would be. That was always a sticking point
7 with practices, the percentage of ads. But
8 could I say with certainty, no. Sorry.

9 Q. Mr. O'Brien asked you about your
10 experience or knowledge of the types of
11 things that are important to practices. As
12 you sit here today, do you believe that it is
13 possible that a practice might be influenced
14 by being told that some 350 other HAN
15 practices had switched to Context in the last
16 year?

17 A. Absolutely.

18 Q. And do you think that a practice
19 might be influenced by being told that the
20 HAN loop consists of upwards of 50 percent
21 ads?

22 A. Without a doubt.

23 Q. Now, in response to every question
24 that Mr. O'Brien asked you about why a HAN
25 practice switched to Context, every bit of

1 L. Grippo
2 information that you have on that subject is
3 information that was told by a practice to
4 somebody at HAN; is that correct?

5 A. Correct.

6 Q. So every bit of information as to
7 what led a practice -- that you testified to
8 why a practice might have left is based on
9 something somebody other than HAN told HAN;
10 is that correct?

11 A. Correct.

12 Q. You had said in one of your
13 responses to a question by Mr. O'Brien that
14 at least in your experience, practices don't
15 always tell you all the reasons why they're
16 leaving; is that right?

17 A. Yes.

18 Q. And expand on that. What did you
19 mean by that?

20 A. I would hear, you know, repeatedly
21 and I think I had indicated that the practice
22 would give Amy's team one reason, but when
23 we, you know, would call them, we would end
24 up getting a different reason. And sometimes
25 they would be like, listen, I just didn't

1 L. Grippo
2 want confrontation, I was just, you know,
3 giving an answer because I just wanted to
4 give the answer that they thought would be
5 easiest for us to hear or whatever.

6 Q. So as an example, and this is just
7 one example, but in an answer you gave to
8 Mr. O'Brien, you said that you understood
9 that HAN lost practices to Context due to
10 connectivity issues. Do you recall that?

11 A. Yes.

12 Q. And your answer was based entirely
13 on information that somebody outside of HAN
14 told to HAN; correct?

15 A. Yes.

16 Q. Now, there was some testimony
17 regarding HAN's contracts with practices. Do
18 you recall that?

19 A. Yes.

20 Q. And you were asked a question by
21 Mr. O'Brien about whether or not you may have
22 ever said or thought, questioned whether or
23 not a HAN contract with a practice was
24 binding. Do you recall that?

25 A. Yes.

1 L. Grippo

2 Q. And in response you were talking
3 about -- there was a specific reference to an
4 exclusivity clause.

5 A. Right. We for a long time did not
6 include a clause in our contracts or
7 agreements that there be -- that we would be
8 the exclusive education provider in a
9 practice's waiting room simply because we
10 were told that that was not a binding
11 contract, because we could not dictate -- we
12 didn't own the practice. So we legally could
13 not dictate what they could or could not put
14 in their waiting room.

15 Q. So any time that you ever heard
16 anyone question whether or not HAN had a
17 binding contract with a practice, did it
18 always relate to the issue of whether or not
19 a practice could be bound to exclusivity?

20 A. I mean that's when it would always
21 -- the contracts would come up. It was
22 really with regards to Accent Health and
23 whether or not we could coexist, which is
24 what I had said. And so I would think yes.

25 Q. Did you ever hear anybody at HAN

1 L. Grippo

2 question whether or not it had a binding --
3 whether the provision in its contracts with
4 practices that required 30 or 60 days'
5 written notice to cancel, did anybody ever
6 raise a question as to whether or not that
7 provision was binding, to your knowledge?

8 A. We wanted to partner, you know, we
9 were partnering with our practices. So it
10 was more out of -- you know, we would say,
11 you know, we want -- we obviously wanted to
12 retain them. And whenever we were asked
13 about that clause, it was, you know,
14 ultimately we wanted to do what's right by
15 you, but we expect that you would honor our
16 agreement, which is the 60 -- I mean 30, and
17 then we ended up increasing it to 60 days'
18 notice. So I don't know if I'm answering
19 your question directly, but it was an
20 expectation that they would honor that
21 clause, yes.

22 Q. And are you aware that HAN's
23 contracts with practices have a provision
24 that essentially says that no one other than
25 HAN is permitted to touch or remove the

1 L. Grippo

2 equipment?

3 A. Yes.

4 Q. And did you always understand that
5 that was a requirement, a binding obligation
6 of the practice that they only let HAN --

7 A. Well, we own the equipment. We
8 don't own the practice.

9 Q. Right.

10 A. So yes. We were responsible for
11 it. I mean our technicians would walk them
12 through some basic things if there was
13 something wrong, but more often than not,
14 even for minor things, we would send someone
15 out to fix the equipment, because we really
16 didn't want people messing with it.

17 Q. I've just got a few -- this looks
18 worse than it is.

19 A. Thank goodness.

20 Q. Exhibits that I wanted to just
21 mark. And I'm probably not going to ask you
22 a lot of questions about them. I just want
23 to get them marked.

24 (Plaintiff's Exhibit 200, Email
25 from Lisa Grippo to Susan Kelly within

1 L. Grippo

2 HAN, marked for identification, as of
3 this date.)

4 Q. Plaintiff's Exhibit 200. Could you
5 just identify this. Is this an email from
6 you to Susan Kelly within HAN?

7 A. Yes.

8 Q. And it's relating to an ACN
9 location that is for Dr. Unopit?

10 A. Yes.

11 (Defendant's Exhibit 201, Email
12 from Lisa Grippo to Diane Fier regarding
13 an can practice, Carolina Specialty
14 Care, marked for identification, as of
15 this date.)

16 Q. Exhibit 201, is this an email from
17 you to Diane -- how do you pronounce her last
18 name?

19 A. Fier.

20 Q. Within HAN?

21 A. Yes.

22 Q. And this is regarding an ACN
23 practice, Carolina Specialty Care?

24 A. Yes.

25 (Defendant's Exhibit 202, Email

1 L. Grippo
2 from Lisa Grippo to people within HAN
3 dated March 21, 2001, marked for
4 identification, as of this date.)

5 Q. Exhibit 202 I've handed you, is
6 this an email from you to some folks within
7 HAN dated March 21, 2001?

8 A. Yes.

9 (Defendant's Exhibit 203, Email
10 from Amanda Devlin to Amy Finley and
11 Lisa Grippo dated March 8th, 2012,
12 marked for identification, as of this
13 date.)

14 Q. Is Exhibit 203 an email from Amanda
15 Devlin to Amy Finley and you dated March 8th,
16 2012?

17 A. Yes.

18 Q. The last couple of questions are
19 just about trying it save practices. In your
20 experience, do you believe it would be more
21 difficult for HAN to try to save one of its
22 practices after its equipment had already
23 been removed from the premises?

24 A. Absolutely.

25 Q. Why?

1 L. Grippo

2 A. The fact that it's already down,
3 you know, that's half of -- you know, why put
4 it back. I don't know. It's just to
5 reinstall -- we found that once equipment was
6 down, it was very tough for us to save. Once
7 it was up, and not even for competitors, just
8 once it was down, they just didn't want the
9 hassle for whatever reason of dealing with an
10 installation again. They're busy practices,
11 and, you know, it's tough to schedule
12 installations to begin with. And we just
13 found that even if they wanted the program,
14 it was challenging just to get the reinstall
15 scheduled and get the equipment back up.

16 MR. COWAN: That's all I have for
17 you.

18 MR. O'BRIEN: I've got a couple.

19 MR. COWAN: Can we go off the
20 record for just one second?

21 MR. O'BRIEN: Sure.

22 VIDEOGRAPHER: The time is
23 44:49 p.m. We're going off the record.

24 (Discussion off the record.)

25 VIDEOGRAPHER: The time is 4:50

1 L. Grippo

2 p.m. We're back on the record.

3 BY MR. O'BRIEN:

4 Q. Your lawyer showed you what he
5 marked as Plaintiff's Deposition Exhibit 200.

6 Do you still have that handy?

7 A. Yes.

8 Q. And if you turn to the back page,
9 there's the CMS comments about why the
10 practice is switching; right?

11 A. Yes.

12 Q. And it's written, "They really need
13 sound in the waiting room." Do you see that
14 down toward the bottom?

15 A. Yes.

16 Q. "Tina said they contacted HAN to
17 inquire about additional sound in the program
18 and was told that the sound that is provided
19 is all that is available at this time." Do
20 you see that?

21 A. Yes.

22 Q. So in this instance there was
23 nothing HAN could do to save the practice,
24 right, because HAN couldn't give the practice
25 what it wanted?

1 L. Grippo

2 A. Sound was absolutely one of the
3 components that we could -- we really could
4 not combat unless we were speaking to the
5 decision maker and explaining to them why --
6 why we -- we deliberately decided not to have
7 sound for many years.

8 Q. But if the decision maker says I
9 want more sound than you can provide, there's
10 nothing HAN could do to save the practice;
11 right?

12 A. I don't believe -- I don't know. I
13 don't think so. If that's their only reason
14 for leaving us, yeah, we don't offer sound.

15 Q. And then it concludes by saying,
16 "There are no notes in the CMS about a sound
17 inquiry." Do you see that?

18 A. Yes.

19 Q. Now, what HAN did for certain
20 factors that were important to POC decisions,
21 POC provider decisions, was they sort of
22 separately tracked those, and sound was one
23 of those; right?

24 A. I'm not sure I'm understanding your
25 question.

1 L. Grippo

2 Q. Do you know what it means in HAN
3 parlance to say sound inquiry?

4 A. "There are no notes in CMS about a
5 sound inquiry." I am guessing that that
6 meant that they were, like I said, if they
7 were tracking reasons for losing, but I've
8 never seen a drop-down anywhere that said
9 "Sound."

10 Q. Okay. So you're not familiar with
11 that?

12 A. Correct.

13 Q. Let's look at 201. And in the
14 middle there it's written, "The reason she
15 went with us was because we were silent,
16 which allowed them to also have a TV"; right?

17 A. Yes.

18 Q. And when certain practices
19 preferred the fact that your content was
20 silent, that was based upon the fact that
21 they could simultaneously display your silent
22 content and have a TV available for the
23 waiting room; right?

24 A. It wasn't preferable, but if a
25 practice wanted us to coexist with the

1 L. Grippo

2 television, we would.

3 Q. Well, you guys were willing to
4 coexist with competitors; right?

5 A. Not in the same waiting room. Not
6 in the same waiting area, no.

7 Q. Isn't it a fact that one of HAN's
8 tactics for trying to save a practice was
9 when HAN was being told that the practice was
10 going to a competitor, in particular
11 ContextMedia, we can be there, too, we can
12 coexist with ContextMedia, that's just fine
13 with HAN? You weren't aware of that?

14 A. We wouldn't -- we could coexist.
15 Typically in a rheumatology office they would
16 have a waiting room as well as an infusion
17 room. So depending upon where they were
18 putting RHN, we could coexist within the
19 practice. I'm not aware that we ever made a
20 recommendation that we could be in the same
21 waiting area with them.

22 Q. Did you understand that it would be
23 inconsistent with the practice's agreement
24 with ContextMedia to have HAN coexist in the
25 practice?

1 L. Grippo

2 A. Again, I guess that goes to
3 exclusivity, right, and I'm not -- I don't
4 recall what their agreement stated with
5 regards to exclusivity. I'm assuming that
6 they did not want to coexist, so.

7 Q. Right. And after it's reported
8 here that the reason they went with you in
9 the first place was so that they could play
10 you and play TV, it's reported that now it
11 was the doctor's decision to make the switch,
12 they were looking for a program with sound.
13 Do you see that?

14 A. No. I'm sorry.

15 Q. After the sentence we focused on,
16 "The reason she went with us" --

17 A. The reason -- right.

18 Q. The very next sentence says, "It
19 was the doctor's decision to make the switch.
20 They were looking for a program with sound";
21 right?

22 A. Yes.

23 Q. And you've mentioned several times
24 today the decision maker. In your
25 experience, the physician is the ultimate

1 L. Grippo
2 decision maker in a practice; right?

3 A. The what?

4 MR. COWAN: The doctor you mean.

5 A. The doctor is the --

6 Q. Right.

7 A. Honestly, quite often it was the
8 office manager, and they would overrule the
9 practice manager. They would at times
10 overrule the doctor. But one of the two,
11 doctor or -- I would think that a doctor
12 could be a decision maker in his own office,
13 yes.

14 Q. It's a fair --

15 A. His or her I should say.

16 Q. -- assumption; right?

17 A. Yes.

18 Q. And then it goes on to note that
19 the practice mentioned that the monitor had
20 been black for two weeks. Do you see that?

21 A. Yes.

22 Q. And then the HAN representative
23 accurately concludes that it's their decision
24 to have whatever program they want out in the
25 waiting room; right?

1 L. Grippo

2 A. Yes.

3 Q. Now, in response to some of
4 Mr. Cowan's questions, I believe he asked you
5 one about whether the connectivity problems
6 that HAN was experiencing was something you
7 knew because practices told you that. Do you
8 recall that question and answer along those
9 lines?

10 A. Yes.

11 Q. But that's not completely true, is
12 it? I mean HAN had documented connectivity
13 problems; right?

14 A. From customers, yes.

15 Q. But you had technicians go out and
16 see that those complaints weren't made up;
17 right?

18 A. Correct.

19 Q. I mean you weren't just relying on
20 the practices. You knew for a fact based
21 upon your own vendor's inspection that there
22 were connectivity issues from time to time;
23 right?

24 A. Yes. And what the cause was, a lot
25 of times it wasn't even a connectivity issue.

1 L. Grippo

2 Someone mistakenly turned the monitor off.

3 Q. But sometimes it was a connectivity
4 issue; right?

5 A. Correct.

6 Q. The practices weren't making that
7 up; right?

8 A. Not to my knowledge.

9 Q. And you knew for a fact that some
10 practices switched because of documented
11 connectivity and service issues; right?

12 A. Correct.

13 Q. And we showed you an email earlier
14 to that effect, remember?

15 A. Yes.

16 Q. You said how am I going to save
17 them when the facts are they've had all these
18 issues; right?

19 A. Correct.

20 Q. Mr. Cowan tried to get you to say
21 that -- that's a poor question. Mr. Cowan
22 asked you some questions suggesting that the
23 discussion about a binding HAN contract was
24 limited to exclusivity issues. Do you
25 remember those questions?

1 L. Grippo

2 A. Yes.

3 Q. And, in fact, you recall, do you
4 not, discussions about the binding nature of
5 HAN's contract in the context of the 30-day
6 notice; right?

7 A. I recall?

8 Q. Right.

9 A. You're asking me if I recall?

10 Q. Right.

11 A. I mean yeah. I guess that could
12 come into question whether or not that's
13 binding, yes.

14 Q. Right. And you recall discussions
15 around that and whether or not HAN could do
16 anything to enforce it; right?

17 A. Yes.

18 Q. And HAN never sued a practice, did
19 it?

20 A. No.

21 Q. It never sought to legally enforce
22 the 30-day provision; right?

23 A. Not that I'm aware of. Most
24 practices respected that.

25 Q. Or the 60-day provision; right?

1 L. Grippo

2 A. Correct. But, again, and as I said
3 earlier, it wouldn't have been an issue if
4 these practices -- if everyone was being
5 ethical and following the rules. It's only
6 because things were not being done ethically
7 that we had to now start enforcing this and
8 questioning what was binding or not. If all
9 was fair and we were losing for legitimate
10 reasons, it wouldn't have been an issue.

11 Q. I didn't ask what your opinion was
12 as to why it was an issue. I was just asking
13 whether you had discussions around that
14 issue.

15 A. We had to start having discussions
16 around that issue, yes.

17 Q. The CMS database, that's a document
18 that's maintained in the ordinary course of
19 HAN's business; right?

20 A. Correct.

21 Q. And HAN relies upon that database
22 to make certain business decisions; right?

23 A. Yes.

24 Q. And those business decisions
25 include sales strategies and tactics; right?

1 L. Grippo

2 A. In what way?

3 Q. Well, a practice seems to think
4 this is important, maybe we could emphasize
5 something to counter that. I mean it's
6 intelligence that you could use to try to
7 better effectuate your sales performance?

8 A. Correct.

9 Q. And it's valuable information to
10 HAN to evaluate and assess its content and
11 whether changes should be made to content;
12 right?

13 A. Absolutely.

14 Q. In fact, they did that; right?

15 A. Yes.

16 Q. And there's probably other reasons
17 that I can't think of that HAN finds that
18 information valuable; right?

19 A. Yes.

20 Q. You said there were instances where
21 you felt practices didn't always tell you the
22 reasons that they were leaving. Remember
23 that?

24 A. Yes.

25 Q. But, again, the best source we have

1 L. Grippo

2 for why they were leaving here in 2014 is the
3 CMS database; right?

4 A. Yes.

5 MR. O'BRIEN: I have nothing
6 further.

7 MR. COWAN: I just have a couple of
8 follow-ups and then you're done.

9 MR. O'BRIEN: He can't promise
10 that.

11 MR. COWAN: That's true.

12 BY MR. COWAN:

13 Q. I think you were asked a couple of
14 questions about 201.

15 A. Yes.

16 Q. And specifically Mr. O'Brien asked
17 you about this. So as I understand it, is
18 this information that's in the CMS system?

19 A. The comment on the bottom is a
20 comment from CMS.

21 Q. So just to better understand it, so
22 this is somebody at HAN talking to somebody
23 at the practice named Savannah?

24 A. Correct.

25 Q. So, first, everything that's here

1 L. Grippo
2 is something that's being reported by some
3 woman named Savannah?

4 A. Correct. Well, being reported
5 by --

6 Q. Well, being reported --

7 A. Heather as -- yeah.

8 Q. And Heather is saying what somebody
9 named Savannah said?

10 A. What Savannah said, yes.

11 Q. And then when Mr. O'Brien asked you
12 about it was the doctor's decision to make
13 the switch, they were looking for a program
14 with sound, that's actually Savannah, some
15 woman named Savannah, saying what the doctor
16 apparently told her?

17 A. Correct.

18 Q. Is that right?

19 A. Correct.

20 Q. So on Exhibit 68, which should be
21 in the stack over there, it's the Johns
22 Hopkins Jonathan email.

23 A. Yes. What is it 68?

24 Q. 68, yeah, previously marked.

25 A. Okay.

1 L. Grippo

2 Q. Do you have that one?

3 A. Yes.

4 Q. So go to the last page.

5 A. Yes.

6 Q. So just a couple of things on this.

7 First, in the second sentence it says,

8 "Jonathan said that he signed a waiver

9 provided by ContextMed," ContextMedia, "that

10 gave them permission to remove our equipment.

11 I asked him to fax me a cc of the waiver, and

12 he said that he would have his customer

13 service rep at CM (Megan) fax it to me. I

14 explained that their enrollment form with us

15 said that only PPT can service or remove PPT

16 equipment. His reply, 'I don't know who is

17 lying to me.'" See that?

18 A. Yes.

19 Q. And then he goes on to say,

20 "Jonathan said that the Johns Hopkins other

21 rheumatology offices are using RHN and like

22 it because there is much more information and

23 not repetitive with interviews, news wires,

24 and streaming weather." Do you see that?

25 A. Yes.

1 L. Grippo

2 Q. I think Mr. O'Brien asked you about
3 that. So that's a situation where Jonathan
4 is reporting to somebody at HAN what somebody
5 at the practice told Jonathan?

6 A. Correct.

7 MR. COWAN: That's all I have.

8 Thanks.

9 THE WITNESS: Okay.

10 BY MR. O'BRIEN:

11 Q. Back to 68, the last page. Where
12 do you see an indication that Jonathan is
13 reporting something someone told him as
14 opposed to Jonathan reporting on his personal
15 observations?

16 A. Are you asking me or are you --

17 Q. Yeah, I'm asking you.

18 A. -- asking Grant?

19 Q. Well, I'd like to ask Grant, but I
20 know what the answer would be.

21 A. Well, because Jonathan is referring
22 to what other rheumatology -- what the other
23 rheumatology offices are saying that are
24 using RHN, not his. He still had our program
25 at the time.

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1 L. Grippo

2 MR. O'BRIEN: All right. That's
3 fine. I have no further questions.

4 MR. COWAN: Thank you, Ms. Grippo.

5 VIDEOGRAPHER: The time is 5:05
6 p.m. on March 26, 2014. This is the end
7 of tape number three. And this
8 completes the videotaped deposition of
9 Lisa Grippo.

10 (Time noted: 5:05 p.m.)
11
12
13

14 _____
15 LISA GRIPPO

16
17 Subscribed and sworn to before me
18 this ____ day of _____, 2014.
19
20 _____
21
22
23
24
25

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF WESTCHESTER)

I, JOAN WARNOCK, a Notary Public
within and for the State of New York, do
hereby certify:

That LISA GRIPPO, the witness whose
deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 2nd day of April, 2014.

JOAN WARNOCK

----- I N D E X -----

WITNESS	EXAMINATION BY	PAGE
L. Grippo	Mr. O'Brien	5
	Mr. Cowan	131
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----- INFORMATION REQUESTS -----

DIRECTIONS:

RULINGS:

TO BE FURNISHED:

REQUESTS:

MOTIONS:

----- EXHIBITS -----

DEFENDANT'S	FOR ID.
EXHIBIT 85	124
Email exchange	
EXHIBIT 87	126
Email exchange involving	
Ms. Grippo, Mr. Ferrara, and	
Mr. Hartfield	

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PLAINTIFF'S	FOR ID.
EXHIBIT 200	140
Email from Lisa Grippo to Susan Kelly within HAN	
EXHIBIT 201	141
Email from Lisa Grippo to Diane Fier regarding an can practice, Carolina Specialty Care	
EXHIBIT 202	141
Email from Lisa Grippo to people within HAN dated March 21, 2001	
EXHIBIT 203	142
Email from Amanda Devlin to Amy Finley and Lisa Grippo dated March 8th, 2012	

DEPOSITION ERRATA SHEET

Our Assignment No.: 104543

Case Caption: Healthy Advice Networks v.
ContextMedia, Inc.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of my
Deposition taken in the captioned matter or
the same has been read to me, and the same is
true and accurate, save and except for
changes and/or corrections, if any, as
indicated by me on the DEPOSITION ERRATA
SHEET hereof, with the understanding that I
offer these changes as if still under oath.

Lisa Grippo

Subscribed and sworn to on the ____ day of
_____, 20 ____ before me.

Notary Public,
in and for the State of
_____.

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Lisa Grippo

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Lisa Grippo